

Ngati Toa Lands Research Project

Report One: 1800 to 1870



R P Boast

2007

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1 Introduction

1.1 Author's Qualifications and Experience

My full name is Richard Peter Boast, I reside at 19 Muri Road, Pukerua Bay, Porirua, and I am an Associate Professor of Law at Victoria University, a consulting historian and a practising barrister. I have a Master's Degree in Law from Victoria University and an MA in History with First-Class Honours from the University of Waikato. I have published numerous articles and books in the general areas of New Zealand legal history, natural resources law, Maori land law and the law relating to the Treaty of Waitangi, and have given numerous conference presentations on these and related subjects both in New Zealand and internationally. I have actively participated in the Waitangi Tribunal process since 1989 when I acted as co-counsel for the claimants in the Pouakani claim. Since then I have appeared on numerous occasions in the Tribunal both as counsel and as an expert witness.

I have worked with Ngati Toa since 1990, when I became involved as an expert witness on behalf of the iwi in a case heard by the Maori Appellate Court sitting at Christchurch dealing with customary boundaries in the northern South Island. I also gave evidence for the Ngati Toa runanga during a hearing by the Maori Land Court under s 30 of Te Ture Whenua Maori. I have written three full reports for Ngati Toa for the Waitangi Tribunal, two of which were presented in the course of the Tribunal's Wellington Tenth's enquiry¹, and one for the Northern South Island (Te Tau Ihu) Regional Inquiry. As one of the historians involved in this enquiry I also gave evidence on so-called 'generic' issues during the Tribunal hearings heard at Nelson in 2002. I will endeavour as best I can to not revisit this material in this current statement of evidence, which is of course designed to focus very specifically on Ngati Toa's relationships with, and grievances against, the Crown.

1.2 Writing this report

This report was written in 2005-7, following the compilation of an extensive document bank of primary sources collected together by Mark Schroder and Hannah Boast. To some extent the text draws on some earlier material prepared for the Wellington Tenth's and Northern South Island regional inquiries. To write this report I began by cutting and pasting fairly freely from an earlier consolidated text I prepared some years ago in which I consolidated

¹ R P Boast, *Ngati Toa in the Wellington Region*, Wai 145 Doc # H8; *Ngati Toa and the Colonial State: A Report to the Waitangi Tribunal*, Wai 145 Doc# K2 (June 1998); *Ngati Toa and the Northern South Island*, 2 vols, Wai 785 Doc#A56 (September 1999/March 2000).

together in chronological order the three earlier reports I prepared for the Wellington and Northern South Island Waitangi Tribunal inquiries. The draft text thus produced was then modified, adapted and very substantially added to in order to take account of the material collected together by Mr Schroder and Ms Boast, but also to take account of recent published scholarly work (for example Dr Ballara's *Taua*) and the findings of the Waitangi Tribunal in its *Te Whanganui a Tara* Report.²

The history of Ngati Toa is richly documented and is an important aspect of 19th century New Zealand history, both before and after the Treaty of Waitangi. The aspiration has been to produce a substantial document which will deal with Ngati Toa's history until circa 1870 in an integrated manner. Principally it will focus on developments in the North Island but some developments in the South Island will be traversed as well. It is in fact not possible to write a history of Ngati Toa focusing exclusively on one island or the other, a point that was made to the Waitangi Tribunal in the Te Tau Ihu inquiry more than once. The report contains three comprehensive appendices. These include an analysis of the process that led to the formation of the Wellington Crown grant in 1848, an analysis of the litigation over the Whitireia reserve at Porirua, and a comprehensive chronology. It is hoped that the appendices will prove useful to those engaged in the final resolution and settlement of Ngati Toa's historic claims.

1.3 Source Materials for Ngati Toa History

Sources for the traditional history of Wellington have been reviewed by various scholars.³ Attached to this report is an extensive bibliography which is a complete record of all primary and secondary sources relating to the history of Ngati Toa in this period. This material belongs to a number of categories:

- a. Native Land Court Minutes (North Island) The Minute Books of the Native Land Court can provide rich source material. With respect to Ngati Toa, the richest source by far is actually the Otaki Minute Books, which are both abundant and begin at a comparatively early date (1868). The Otaki Minute books are a better and richer source than the South Island Minute Books for these reasons, and have the added advantage that many of those who gave evidence, such as the great Ngati Toa and Ngati Raukawa rangatira Matene Te Whiwhi were actually eyewitnesses of the events they describe. Unlike

² Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa*, Wai 145, Legislation Direct, Wellington, 2003.

³ See Anderson and Pickens, *Wellington District*, Rangahaua Whanui Report, August 1996, p 3.

any of the witnesses in the South Island cases, some of them had actually participated in the hekes of the 1820s themselves. Nopera Te Ngiha (Ngati Toa), for example told the Native Land Court that “I came with Rauparaha from Kawhia in the second ‘heke’” and that he personally had accompanied Te Rauparaha when the latter visited Ngati Raukawa in his search for allies.⁴ The evidence in the Otaki MBs, moreover, is often substantial. In 1872 Matene Te Whiwhi gave evidence describing Ngati Toa’s travels from Kawhia and the history of the iwi’s settlement in the Cook Strait region, and spoke as well of Ngati Toa’s relations with Ngati Apa, Muaupoko, Rangitane, Ngati Kahungunu, Ngati Awa, Ngati Tama and Ngati Raukawa. Matene spoke for three days and his evidence covers many pages of the Court minutes.⁵ There is far too much material in the Otaki Minute Books for me to have analysed it all. Evidence given in the Otaki sequence is not, of course, confined to Ngati Toa, but is also given by witnesses with other iwi affiliations, notably Te Ati Awa and Ngati Raukawa, which I have not covered. It is my view that it would be very unsafe for this Tribunal to make definitive pronouncements on traditional history of the Cook Strait region without taking fully into account all relevant Minute Book evidence, which means in particular the Otaki Minute Books.

- b. Native Land Court Minutes (South Island): For the South Island the principal source is the Nelson Tenth’s investigation of title heard by Judge Mackay in 1892. Ngati Toa did not themselves give evidence in this case or in any other of the principal South Island cases (which are very few, as it happens), although they were a party to the 1892 Nelson Tenth’s investigation. The material in the South Island Minute Books is disappointing as source material both because there is so little of it – a handful of cases – and because it is so late.⁶ However this material is only a tiny fraction of the available Native Land Court material dealing with the traditional history of Ngati Toa and the tribes of the coalition.
- c. Other areas: Some Minute Books from other areas have provided some useful material. These include the Waikato (Puahue and Maungatautari cases), Otorohanga (Rohe Potae case), Chatham Islands and Wellington

⁴ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 392.

⁵ Kukutauaki case, (1872) 1 Otaki MB 135 et seq.

⁶ The first case in the Nelson MBs is the Rangitoto case, decided in 1883: see (1883) 1 Nelson MB 1.

Minute Books. The Puahue and Maungatautari cases provide useful details on the critically important relationship between Ngati Toa and Ngati Raukawa; the Rohe Potae case contains a wealth of information – from the Ngati Mahuta perspective, admittedly – on the departure of Ngati Toa, Ngati Koata and Ngati Rarua from Kawhia, and the Chatham Islands Minute books have some details on the role played by Ngati Mutunga in the conquest of Te Tau Ihu.

- d. Reliability of Land Court material: The Native Land Court, established by the Native Lands Acts 1862-65⁷, had the primary function of investigating and enquiring into customary titles as the first part of a two-stage process by which traditional or customary tenures were converted to Crown-granted freeholds. The process resulted in the generation of vast quantities of evidence, but there are certainly issues as to how this material ought to be interpreted and how reliable it actually is. Scholars who have grappled with this question have dealt with this problem in a variety of ways. One writer, Brent Layton, went so far as to argue that the Land Court Minute Books are “useless” for “establishing traditional Maori alienation rights”.⁸ This is probably to go too far, but in my view Layton is certainly right to warn against uncritical reliance on the Minute Books as evidence of Maori customary practice. Angela Ballara, on the other hand, has used Land Court records fairly extensively in order to reconstruct Maori history and social structure, although she has been careful to emphasise the practical and interpretive difficulties involved.⁹ Ann Parsonson believes that historical evidence given in the Land Court has a certain mechanical or formulaic quality caused by witnesses tailoring their evidence to what they thought, or had been briefed, that the Court wanted to hear, and has described the “narrow scope and rigid format” of Land Court evidence; presentation of such evidence, she believes, came with a loss of “emotional intensity”.¹⁰ A

⁷ All earlier accounts of the evolution of the Native Lands Acts have in my opinion now been superseded by D M Loveridge, *The Origins of the Native Lands Acts and Native Land Court in New Zealand*, (October 2000). This report was prepared as part of the Crown evidence in the Hauraki claim and is an eminently fair-minded and thorough discussion of the political background to and evolution of the legislation from 1856-65. Loveridge sites the process of debate firmly in its context of the broader struggle between colonial governors and local politicians over the control of Native affairs.

⁸ B Layton, “Alienation Rights in Traditional Maori Society: A Reconsideration”, *Journal of the Polynesian Society*, 1984, vol 94, 423.

⁹ See the discussion in Ballara, *Iwi*, Victoria University Press, Wellington, 1998, 43-4.

¹⁰ Ann Parsonson, “Stories for land: oral narratives in the Maori Land Court”, in Bain Attwood and Fiona Magowan (eds), *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, Bridget Williams Books, Wellington, 2001, 21, at 40 and 39.

particularly interesting discussion is that by Roger Neich, an art historian, who has focused on the effects of the Land Court process on the Maori world view, creating a kind of lineal historical consciousness which was not there before. Thanks to the Court process, 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”.¹¹ This in turn had consequences in the area of Maori representational art.

- e. Criteria for Assessment of Minute Book Evidence: The views just cited make it plain that leading scholars regard Land Court material as a troublesome and certainly to some extent a risky source. Given this, a few basic cautions seem in order. Earlier material should in my view be preferred to later, and very little weight can be placed on isolated statements in the Court. The safest practice is to immerse oneself in as much of the relevant material as possible drawn from as many cases as possible. These are commonsense guidelines in any case, equally true of any historical enquiry: interpretations based on as wide a range as possible of the earliest material possible are to be preferred to interpretations based on later and restricted materials. The South Island Minute Books, as I have already indicated, are in my view both late and restricted.¹²
- f. Manuscript Sources: A number of key MS sources will be drawn on and are referred to in the attached bibliography. The earliest and most interesting primary source deriving directly from Ngati Toa itself are the two Ngati Toa letters to Grey written in December 1851 and September 1852. These letters were signed by all the leading chiefs of the iwi, including Te Whatarauhi Nohorua, Rawiri Puaha, Matene Te Whiwhi, Hohepa Tamaihengia, Nopera

¹¹ Roger Neich, *Painted Histories: Early Maori Figurative Painting*, Auckland University Press, Auckland, 1993, 157.

¹² See also Alan Ward, *Maori Customary Interests in the Port Nicholson District, 1820s to 1840s*, A Report Commissioned by the Waitangi Tribunal, 1998, Wai 145 Doc#M1, p v. Here Professor Ward discusses my views on the interpretation of Minute Book material as set out at p 12 of my report on *Ngati Toa in the Wellington Region*. I suggested there that the main criteria for assessing reliability were whether the witness was an eyewitness, whether the witness was an interested party, whether the evidence was uncontested, and whether it was ‘comprehensive’. Ward agrees with these tests “in the main” but added, first, that “the fact that evidence was uncontested in the Native Land Court might mean very little”, and that he “would be inclined to give more weighting to a statement made early than one much later” (ibid):

For this reason the evidence given in 1842 and 1843 before the Spain commission is preferable evidence given much later (for example in the 1880s and 1890s when Maori had learned how evidence had to be presented to win in the Native Land Court.)

Te Ngiha and Ropata Hurumutu. These documents, which appear to be connected with the Pakawau transaction, are an important early source and have been published with detailed notes and commentary by Bruce Biggs in the *Journal of the Polynesian Society*.¹³ Another important MS is the Te Kanae MS, so-called, written in 1888 for Hane Te Rau (a daughter of Te Rau o Te Rangi and Sir Maui Pomare's aunt) by Wiremu Neera Te Kanae of Ngati Toa. A typescript translation of this document made in 1948 by George Graham is held in the Auckland Museum Library. This MS mainly focuses on Ngati Toa relations with Ngai Tahu. Tamihana Te Rauparaha wrote a biography of his famous father, and an illustrated but incomplete edition of this was published by Alister Taylor in 1975.

- g. Contemporary Books: There is no shortage of books written in the 1830s and 1840s which describe the Cook Strait district. Many of these are politicised in some respects. Some of these books, such as Fox's *Six Colonies of New Zealand* or Edward Jerningham Wakefield's *Adventure in New Zealand* are written from a radical Liberal standpoint and go out of their way to pillory the colonial government in general and the governors in particular, Hobson, Fitzroy (especially) and Grey. Other books are written by army and navy officers, which tend to be somewhat more pro-government and more critical of the New Zealand Company and the Wakefields. Governor Fitzroy himself wrote a book on the events of his controversial governorship in New Zealand which also has been drawn on in this report.¹⁴ One valuable source is Lieutenant H F McKillop's *Reminiscences of Twelve Month's Service in New Zealand* (1849)¹⁵, an eyewitness account of events at Porirua in the 1840s (it was McKillop himself who seized Te Rauparaha). McKillop arrived in New Zealand on board HMS *Calliope* in 1845. Written in a kind of gung-ho, *Boy's Own Adventure* style which treats events at Porirua in 1846 as something of a lark, this text nevertheless is a very full narrative of what happened and provides much circumstantial detail not found elsewhere.
- h. Nineteenth-Century Ethnographic Sources: While the MB evidence has its interpretive difficulties, even more problematic is the material collected

¹³ See Biggs, "Two letters from Ngaati-Toa to Sir George Grey", *Journal of the Polynesian Society*, vol 68, 1959, 262-76.

¹⁴ Robert Fitzroy, *Remarks on New Zealand*, W and H White, London, 1846 (Hocken Library Facsimile ed., 1969).

¹⁵ Lieut. H.F. McKillop R.N., *Reminiscences of Twelve Months' Service in New Zealand*, Richard Bentley, London, 1849.

together by nineteenth-century Pakeha amateur ethnographers such as Charles Heaphy,¹⁶ Alexander Shand,¹⁷ Edward Tregear, John White, S Percy Smith¹⁸ and Elsdon Best.¹⁹ M P K Sorrenson has described White's *Ancient History of the Maori* as a "scissors and paste compilation from note books that White paid literate Maoris to fill up with traditions gathered from elders".²⁰ Percy Smith wrote a very detailed account of the history of the migrations of Ngati Toa and the other groups, but it turns out that this was almost entirely based on notes taken by John Ormsby from the evidence of Major Te Wheoro and Hone Kaora of Ngati Mahuta during the Rohe Potae case in 1886 – evidence which was designed to demonstrate a claim to Kawhia by Ngati Mahuta on the basis of take raupatu, a claim which the Land Court rejected.²¹

- i. Modern literature: A large number of secondary sources are listed in the bibliography. These include published works and unpublished research reports commissioned for the Wellington Tenth, Northern South Island and other Waitangi Tribunal inquiries, and a number of theses and other university dissertations. A noteworthy addition to the modern literature is a massive work by Hilary and John Mitchell, *Te Tau Ihu o Te Waka: A History of Maori of Nelson and Marlborough*, vol 1 of which was published in 2004. Particularly useful secondary works are the Patricia Burns' *Te Rauparaha* and Ian Wards' *The Shadow of the Land*, which contains a detailed account of events in the Hutt Valley and Porirua during the 1840s. There is also the Waitangi Tribunal's report on the Wellington Tenth claim, *Te Whanganui a Tara me ona Takiwa*, released in 2003.²² Other important secondary works on the New Zealand Company include Patricia Burn's *Fatal Success: A History*

¹⁶ Charles Heaphy, "Notes on Port Nicholson and the Natives in 1839", *Transactions and Proceedings of the New Zealand Institute*, 12, 1879, pp 32-39.

¹⁷ Alexander Shand, "The Occupation of the Chatham Islands by the Maoris in 1835", *Journal of the Polynesian Society*, vol 1, 1892, pp 83-94, 154-63, 202-9 and Vol. 2, 74-86.

¹⁸ S Percy Smith, *History and Traditions of the Maori of the West Coast of the North Island Prior to 1840*, Polynesian Society, New Plymouth, 1910; and *Maori Wars of the Nineteenth Century*.

¹⁹ Elsdon Best, "Te Whanganui-a-Tara: Wellington in Pre-Pakeha Days", *Journal of the Polynesian Society*, Vol 10, 1901, pp 107-165 and "The Land of Tara and they who settled it", *Journal of the Polynesian Society*, Vol 26, 1917, pp 143-69, and Vol. 27, pp 21-25, 49-71, 99-114, 165-77 and Vol. 28, pp 1-17, 79-96, 123-33.

²⁰ Sorrenson, *Maori Origins and Migrations*, Auckland University Press/Oxford University Press, 1979, 43. Sorrenson says that White's volumes were in turn "mined" by Percy Smith for his *Peopling of the North and History and Traditions of the Taranaki Coast*.

²¹ See S P Smith, "History and Traditions of the Taranaki Coast", *Journal of the Polynesian Society*, vol 18, 1909, 50; Judge Mair, Rohe Potae judgment, (1886) 2 Otorohanga MB 55, at 66 ("we are of opinion that there was no conquest of Kawhia according to the strict meaning of the term, but that Te Rauparaha and his people went away quietly at a time when there was no fighting").

²² Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003.

of the New Zealand Company (1989), John Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes, 1839-1852* (1958), Michael Turnbull, *The New Zealand Bubble: The Wakefield Theory in Practice* (1959) and (for the imperial background), Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830-1847* (1977).

1.4 An overview

It would probably be helpful to give a brief overview of Ngati Toa's history up to around 1860 here. Beginning in about 1820 a number of Waikato coast and North Taranaki tribal groups, led by Ngati Toa, left their traditional territories and migrated south. These migrations and the displacements that they caused are a significant event in New Zealand history. This movement reached its farthest-flung extent with Ngati Mutunga's invasion and settlement of the Chatham Islands in 1835 (although for the most part Ngati Mutunga returned to Taranaki in 1868, but re-established themselves in the Chathams with a peaceful influx of younger people in the 1880s who returned to their parents' lands and cultivations).²³ The boldest and most reckless of all the invasions was undoubtedly was the unsuccessful attempt by the Ngati Tama chief Te Puoho to attack Ngai Tahu in Southland after an epic journey the length of Westland and across the Southern Alps; he did this, according to Ngati Rarua/Ngati Tama chief who knew him "so that his name should be in the ascendant".²⁴ By the time the migrations were over, not only were Ngati Mutunga (and sections of Ngati Tama and Ngati Haumia) established on the Chathams, but Ngati Toa, formerly of Kawhia, at Porirua, Kapiti, Pelorus Sound and the Wairau Valley, Ngati Raukawa at Otaki and Horowhenua, Ngati Koata - originally a sub-tribe of Ngati Toa - at Rangitoto (D'Urville Island), Ngati Rarua (also a former Ngati Toa sub-tribe) in Nelson, Te Ati Awa at Waikanae, Arapawa, and Wellington, and other fragments of Ngati Tama just about everywhere (Wellington Harbour, the Hutt Valley, Nelson and Golden Bay). This expansion, or displacement, came at the expense of the existing settled populations of central New Zealand and the Chatham Islands. As at 1840, led by their great chief Te Rauparaha, Ngati Toa were solidly established on the Kapiti Coast and were at the centre of a wide-ranging and complex polity that covered extensive territories in the North and South Islands.

Within a few years in the 1840s this was all to change. By 1860 Ngati Toa, formerly the owners of an extensive, if no doubt contestable, demesne in central New Zealand, had now lost their lands almost entirely. Ngati Toa rights at Wellington and in the Hutt Valley were largely erased by a process of pre-Treaty purchase and subsequent investigation and

²³ See generally R.P. Boast, *Ngati Mutunga and the Chatham Islands: a report to the Waitangi Tribunal*, March 1995.

²⁴ (1892) 2 Nelson MB 179 (evidence of Taka Herewine Ngapiko).

grant, a process that affected the other tribes of the area as well. The New Zealand Company's attempt to acquire land at Porirua itself and to extinguish Ngati Toa title more generally was overruled by Commissioner Spain, leaving the status of surveyed lands and allocated reserves around Porirua uncertain. In 1846, however, Te Rauparaha was kidnapped and detained by Governor Grey, and this achieved what the New Zealand Company could not; during his detention Ngati Toa chiefs sold the Wairau and Porirua blocks to the government. 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. That left the reserve areas within the Wairau and Porirua blocks and uninvestigated land north of Porirua. These blocks, such as the Pukerua, Hongoeka, and Kapiti blocks were all investigated by the Native Land Court after 1865; and have since mostly been sold. The reserve areas within the Wairau and Porirua purchase blocks were themselves later investigated by the Native Land Court and converted to Maori freehold land: some of these areas were later alienated as well. Remaining lands on Kapiti Island and elsewhere were acquired by the Crown around the turn of the century. Such are the main events.

Within this broader timeframe there is a critical four-year period from June 1843 to mid-1847 which will be given particular emphasis in this report. At the beginning of that period Ngati Toa, still led by their great chiefs Te Rauparaha and Te Rangihaeata, continued to be a formidable force in the Cook Strait region, despite all the changes, social and demographic, that had taken place over the preceding decade or so. In 1843 the tribe was able to comprehensively defeat and scatter an attempt by the magistrates of Nelson to arrest the leading chiefs. The reality of Ngati Toa power was sufficient to cause considerable apprehension at Nelson and Wellington, especially after the Wairau affair. But by mid-1847 Te Rauparaha was in the unlawful custody of the Governor, Te Rangihaeata in exile at Poroutawhao, and Ngati Toa's lands at Porirua and the Wairau in the hands of the Crown. This was largely attributable to the efforts made by Governor Grey, who was under instructions from the British government to assist the New Zealand Company.

The writer has spent many years writing reports about, and thinking about, the history of Ngati Toa in the key decades from 1820-1870, the period focused on in this report. There are similarities and differences with the history of Maori land alienation in other parts of the

country. In my view, the conflicts between the Crown and Ngati Toa, especially in the 1840s, were essentially a contest about *power* as much as they were a conflict over *land*. Of course the two interconnect, but it remains the case that the struggle for power was especially important in the case of Crown-Ngati Toa relations. The struggle between the Crown and Ngati Toa thus has many similarities with the later conflict between the Crown and the Kingitanga, where the issues were over law and sovereignty as much as they were over land. However the Crown-Ngati Toa conflict has some particular features of its own. The engagement with Ngati Toa happened at an early stage in the country's history. This did not only mean that the institutions of the colonial state were still in many ways ephemeral, but meant also that the British government itself was very closely involved in New Zealand affairs. Secondly, the power struggle was not two-way, but three-way, given the presence of the New Zealand Company and its Port Nicholson and Nelson settlements in the Cook Strait region. The Crown-New Zealand Company struggle interacted with confrontations between the Company and Maori, and the Crown and Maori (and Maori with one another) in a number of ways and at a number of levels. This makes the history of Crown-Ngati Toa relations very complex. The complexity also meant very difficult choices for the Ngati Toa leadership. Given the obvious racism and threatening behaviour of the New Zealand Company settlers, some of the Ngati Toa leadership may have seen the Crown, sometimes linked in their eyes with the new presence of Christianity, as a better option for survival. The Crown, however, while determined to resist the pretensions of the Cook Strait settlers, was no more committed to the preservation of Ngati Toa's power, autonomy and traditional economy than they were. By the early 1850s the New Zealand Company had vanished from the scene and Ngati Toa, the only real Maori counterweight to either the Crown or the Company in the Cook Strait region, had been overcome.

The New Zealand Company had posed an alternative, settler-driven model to British-Maori relations to the mixture of authority and paternalism favoured by the Crown and by its colonial governors. The New Zealand Company settlers were liberals and radicals, committed to an ideology of freedom of contract and to settler control of New Zealand affairs. Although the New Zealand Company itself disappeared, its legacy did not, resurfacing in the conflicts over Native Affairs in the 1860s and in the establishment of a quintessentially 'liberal' and free market approach to Maori land issues, that is to say the Native Lands Acts and the Native Land Court. The effects of both on Ngati Toa will be considered in Report Two.

1.5 The Political and Historical Context: An Introductory Survey

Until 1862 land acquisition by the New Zealand government centred around the legal theory of Crown pre-emption which was formally reflected in a number of colonial ordinances and

decisions of the New Zealand courts.²⁵ Under a theory of Crown pre-emption only the Crown could lawfully extinguish native customary titles. The rule is a basic plank of imperial constitutional law and is central to the law relating to land titles not only in New Zealand but also to that of Australia, Canada, and the United States. The necessity of a theory of Crown pre-emption was recently been re-emphasised by the High Court of Australia in its 1992 decision in *Mabo v. Queensland*: since customary titles are governed by indigenous customary law, Brennan J. reasoned, purchases by private European individuals who can have no understanding of that law - and which is a law unknown to the ordinary courts - must obviously be ineffective.²⁶

It follows that a right or interest possessed as a native title cannot be acquired from an indigenous people by one who, not being a member of the indigenous people, does not acknowledge their laws and observe their customs.... Such a right or interest can be acquired outside those laws and customs only by the Crown.

There can be no private ownership by the non-indigenous without the Crown first interposing and extinguishing the native title in some lawful manner.

Pre-emption in New Zealand law derives from the Marquess of Normanby's instructions to Governor Hobson, the final version of which is dated 15 August 1839.²⁷ Hobson was instructed to carry the pre-emption doctrine into effect by issuing a proclamation that the Crown would not recognise as valid any private title to land "which is not either derived from, or confirmed by, a grant to be made in Her Majesty's name, and on her behalf". Normanby, rather over-optimistically, instructed Hobson further that pre-emption would allow Crown land-buying from Maori to be essentially self-funding:

The re-sales of the first purchase that may be made, will provide the funds necessary for future acquisitions; and, beyond the investment of a comparatively small sum of money, no other resource may be necessary for this purpose. I thus assume that the price paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers. Nor is there any real injustice in

²⁵ For an excellent general discussion of pre-emption see Michael Belgrave, "Pre-emption, the Treaty of Waitangi and the Politics of Crown Purchase", *NZJH*, vol 31, 1997, pp 23-37.

²⁶ *Mabo v. Queensland (No 2)*, (1992) 107 ALR 1, 43. Sourcing pre-emption in customary law in this way is actually a rather novel way of analysing the issue, as Brennan J recognises at *ibid*, fn. 127. For differing emphases see *R v Symonds* (1847) NZPCC, 390; *Johnson v. McIntosh*, (1823) 21 US 259; *St Catherine's Milling & Lumber Co v R* (1888) 13 SCR 577, 599; and see generally McHugh, *Maori Magna Carta*, 78-81, 101-103.

²⁷ The instructions are reprinted in McNab, *HRNZ*, 729-39 and in GBPP 1840/238 (IUP[NZ], vol 3, 37). These instructions have become a key text in "Treaty" jurisprudence: see especially the Waitangi Tribunal's analysis in *Orakei*, Wai 9, 1987, 137-40 and *Ngai Tahu*, Wai 27, 1991, 219, 233-36.

this inequality. To the natives or their chiefs much of the land of the country is no actual use, and, in their hands, it possesses scarcely any exchangeable value.

Relying on this and other evidence, Peter Adams has argued that the real purpose of pre-emption was actually economic. It allowed the Colonial Office “to finance systematic colonization by government profits on land bought from Maoris”.²⁸ It is undoubtedly the case that the British government, in colonial as much as in domestic affairs, believed strongly in “strict economy” at all levels, and thus if colonial expansion in New Zealand could be made to be self-funding, in a sense, then so much the better. Adams, however, overlooks the legal and constitutional dimensions of pre-emption, and in this way exaggerates its economic aspects. Pre-emption was an attribute of imperial constitutional law everywhere, originating from a royal proclamation made in 1763 relating to the North American colonies but which in turn derived from some core concepts common to the law of all of the western European colonising states.²⁹ The necessity of insisting that only the Crown could legally cancel native title is obvious given the likely consequences that could ensue if such a power was placed in the hands of the settler community. Indeed, even if the pre-emption doctrine had not been referred to in the Treaty of Waitangi, it would have undoubtedly been applied in New Zealand in any event.

Hobson arrived at Sydney on his way to New Zealand on 24 September 1839, where he had long discussions with Governor Gipps. Gipps treated Hobson as Lieutenant Governor immediately, evidently under the impression that New Zealand was in some way *already* a dependency of New South Wales.³⁰ Gipps arranged for the drafting of three proclamations, issued on 19 January 1840, to the effect that the jurisdiction of the governor of New South Wales now extended to New Zealand, that Hobson had taken the oaths of office as lieutenant governor, and that no new titles to land in New Zealand would be recognised unless obtained by Crown grant and existing titles would be enquired into by special commissioners. These proclamations, especially the third, caused consternation amongst the New South Wales business community, which had already invested heavily in speculative land purchases from Maori chiefs.

²⁸ Peter Adams, *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland University Press/Oxford University Press, Auckland, 1977, p 14.

²⁹ On the 1763 proclamation see generally Weaver, *Great Land Rush*. The proclamation was intended to prevent British settlers from settling on Indian lands west of the Appalachian watershed and to impose a pre-emptive regime in favour of the Crown within the British North American colonies. Weaver notes that the proclamation “inconvenienced speculators, but failed to stop them” (ibid, 102). In the United States after independence an equivalent to pre-emption was vested in the federal government by the Trade and Intercourse Acts of 1790, 1793, 1796, 1802, and 1834. See generally J P Mazurek, J Wrend and C Smith, (eds), *American Indian Law Deskbook*, University Press of Colorado, 1998, 13-15; *Oneida Indian Nation v County of Oneida*, 414 U.S. 661 (1974).

³⁰ See McLintock, *Crown Colony Government*, 57.

On 19 January Hobson left on board the *Herald* for New Zealand. As soon as he arrived he read out his two commissions before a motley crowd of Kororareka locals, and then issued proclamations of his own, to more or less the same effect as Gipps'. Then followed the well-known events of the signing of the Treaty at Waitangi at the house of the British resident, James Busby and the taking of the Treaty around the country for signature. At the same time, of course, the New Zealand Company ships were trickling into Wellington harbour, and in order to make it clear that the whole of the country was under British sovereignty and thus that the Wellington settlers were under his control, Hobson issued his two proclamations of sovereignty on 21 May.

The English-language version of the Treaty of Waitangi contained a clear assertion of the doctrine of Crown pre-emption. What did Maori suppose they were agreeing to in this regard? Pre-emption is an abstruse legal concept which must have been difficult to convey precisely in Maori, assuming that is that those entrusted with the task of taking the Treaty around the country grasped it themselves. Adams has pointed out that the only evidence of an explanation of the concept of pre-emption relates to Bunbury's discussions with the chiefs at Coromandel and Tauranga. Here Bunbury explained that the purpose of pre-emption was to check imprudent land selling, encourage the settlement of Europeans, and to obtain land "at a juster valuation" - all of which Adams finds "palpably misleading".³¹ Quite what pre-emption meant seems to have genuinely confused Maori and a number of Pakeha too. It is possible that Henry Williams at Waitangi had explained the right of pre-emption as a Crown right of *first refusal*, whereas Colenso believed that it meant an absolute prohibition of sale to any but the Crown but that "the Maori themselves were unaware of this".³² Exactly what was explained and agreed to is difficult to answer from the documentary evidence. Certainly the Crown never understood pre-emption to mean merely a right of first refusal, and this, equally certainly, is not its legal meaning. The legal rule is that no one but the Crown may extinguish native title *at any time*; it is essentially a doctrine of property and constitutional law. Maori, however, came to believe that what they had agreed to was merely a right of first refusal, and it is possible that this is the most natural meaning of the Maori text. It seems too that Maori, especially in the North, quickly became disillusioned with pre-emption when it transpired that while the Crown forbade alienation to any but itself, it had no money with which to pay the market price for land.³³

One of the first tasks of the new-born New Zealand colonial state had to deal with was the nagging problem of the status of pre-Treaty transactions. Before the Treaty many individuals, to say nothing of the New Zealand Company, had 'bought' huge acreages of land

³¹ See Adams, *Fatal Necessity*, 198-99.

³² *Ibid*, 199.

³³ See Rigby, *Empire on the Cheap*, esp. ch 4.

directly from Maori, creating thereby weak or equitable interests which they then hoped to convert into strong interests in the form of Crown grants following annexation.³⁴ This was a tried and true practice on the colonial frontiers of North America, South Africa and Australasia during the 19th century. In New Zealand the government set up a commission of enquiry, established pursuant, in the first place, to a New South Wales ordinance, later replaced by a more or less identical New Zealand ordinance in 1841 once the new colony had been formally separated from New South Wales³⁵. Section 2 of 1841 New Zealand ordinance formally enacted the pre-emption doctrine of the second limb of Article II of the Treaty of Waitangi into law:

...all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and shall remain Crown or Domain Lands of Her Majesty...and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty...and that all titles to land in the said Colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases...either mediately or immediately from the chiefs or other individuals...of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty...shall be absolutely null and void.

Section 3 of the Land Claims Ordinance provided that the governor could appoint commissioners “to hear examine and report on claims to grants of land”. However, the situation was complicated by the arrangements entered into between the British government and the New Zealand Company. In November 1840 the home government and the company had agreed that the company would be entitled to 4 acres of land in New Zealand for every £1 spent. Apart from the Company transactions there were also the many other transactions involving Maori and the missionary societies, individual missionaries, persons involved in bush-felling, storekeeping and other forms of trade and commerce, and New South Wales land speculators. These "old land claimants", who numbered James Busby, the former British resident, and "Baron" Charles de Thierry in their ranks, proved to be a noisy and troublesome

³⁴ On which see generally Weaver, *Great Land Rush*, especially pp 88-125.

³⁵ Gipps' act, titled “An Act to empower the Governor of New South Wales to appoint Commissioners with certain Powers to examine and report on Claims to Grants of Land in New Zealand” was introduced into the New South Wales Legislative Council on June 1840, where it was bitterly attacked by Wentworth, but which nevertheless passed with ease and was gazetted on 22 August 1840. His Act caused a great uproar amongst the New Zealand Company settlers at Port Nicholson, and a deputation travelled to Sydney to complain about the act, but Gipps remained unmoved. The New Zealand Ordinance is titled “New South Wales Act 4 Vict No 7 Repealed” but is more usually referred to as the Land Claims Ordinance 1841, which is how it will be cited here.

pressure group who wanted their titles recognised and confirmed, if possible, by formal grants.

The critical issue in early colonial New Zealand was not the applicability of the pre-emption rule, which was not in doubt, but rather whether Maori property rights covered the whole country. New Zealand Company officials and settlers and their parliamentary supporters were powerfully influenced by the admittedly highly convenient theories of Locke, who in his *Second Treatise of Government* (1689-90) argued that property in land could arise only from the expenditure of labour and capital.³⁶ Under this theory, Maori had title only to the lands which they actually occupied and cultivated. The rest was ‘waste land’, which the Crown could immediately grant without further ado once it had acquired sovereignty. Thus when the New Zealand Company drew up its November 1840 agreement with the British government (i.e. that it was entitled to four acres of land for every £1 spent), company officials such as William Wakefield, Company Agent at Wellington, assumed, or claimed to assume, that the lands could simply be granted out of the supposedly extensive waste lands of the Crown.³⁷ British government policy on this crucial point was itself confused: although some highly-placed individuals, especially James Stephen, Permanent Secretary at the Colonial office, believed that the Treaty of Waitangi guaranteed Maori title to all of their lands, this was not a view that was universally shared.³⁸

Whig politicians in Britain, perhaps out of ideological leanings which emphasised private property rights, Lockean ideas and a certain antipathy to giving the Crown a central role in the scheme of things, tended to support the New Zealand Company position. It was the Tory Colonial Secretary, Lord Stanley, who finally decided in 1845 that Maori had title to all lands understood by Maori to be theirs according to Maori customary law, which in practice meant the whole of the country. The incoming Whig government led by Lord John Russell which took office in 1846 was prepared to reverse this and to resurrect a ‘waste lands’ theory at the eleventh hour. This, however, never became policy in New Zealand due to a decision made by the Colonial Secretary, Earl Grey, that a less risky policy would be to embark on a policy of pre-emptive purchasing while nominally recognising Maori title to the whole country. The new governor, George Grey, was directed to aid the New Zealand Company settlers in obtaining title to disputed lands at Wellington and elsewhere, which he did by

³⁶ On the centrality of Locke to the issue of land rights in British colonies see Anthony Pagden, “The struggle for legitimacy and the image of empire in the Atlantic to c.1700” in Nicholas Canny (ed), *OHBE*, vol 1, 34-54.

³⁷ “Agreement between Her Majesty’s Government and the New Zealand Company”, November 1840, *Twelfth Report of the Directors of the New Zealand Company*, 4, London, pp 5c-10c.

³⁸ The interplay between British politics, New Zealand realities, colonial governors and the key pressure groups (the New Zealand Company and the Church Missionary Society) in the period from 1839-46 makes for a complex story. The best guide is Peter Adams, *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland University Press/Oxford University Press, 1977.

means of military campaigns in the Hutt Valley and the Kapiti coast, kidnapping the Ngati Toa chief Te Rauparaha and then applying pressure on the younger Ngati Toa chiefs to sign the Wairau and Porirua deeds in early 1847.³⁹ Adams judges that it “was the realization, slow and reluctant though it had been, that the Maoris did own the ‘waste’ lands in New Zealand, which induced the Colonial Office to turn the treaty [of Waitangi] against itself”⁴⁰ by reliance on the Crown’s right of pre-emption set out in Article II.

Maori title to nearly two-thirds of the country was extinguished in the years before 1860, before either the establishment of the Land Court or confiscation under the New Zealand Settlements Act. Much of this vast acreage is accounted for by Ngai Tahu lands in the South Island, but substantial areas were also acquired in the North Island, especially in Wellington, Hawke’s Bay, Auckland and Northland. Of particular significance for Ngati Toa were the pre-emptive Crown purchases of the Wairau and Porirua blocks, and Te Waipounamu transactions of the early 1850s (the latter featured prominently in the Waitangi Tribunal Te Tau Ihu inquiry).

This purchasing was conducted by officials who saw themselves as agents of the Crown as such, rather than of the colonial regime. Although responsible government was conferred by the Constitution Act of 1852, described by Dalton as “surely the most liberal and elaborate ever devised for 26,000 colonists”⁴¹ it was not finally implemented until 1856. At that time the Governor, Gore Browne, stipulated that Maori affairs remain under his personal control. In any event, until 1867 Maori were effectively denied political representation in the House of Representatives or the provincial assemblies as Maori customary titles did not meet the electoral franchises established by the Constitution Act 1852.⁴² Before and after responsible government the government’s land purchase officers, headed by Donald McLean, saw themselves as direct servants of the Crown, answerable to the Governor and separate from the whims and directions of colonial politicians.

³⁹ The Wairau deed was signed by just three Ngati Toa chiefs, Rawiri Puaha, Matene Te Whiwhi and Tamihana Te Rauparaha.

⁴⁰ Adams, *op.cit.*, 193.

⁴¹ B.J. Dalton, *War and Politics in New Zealand 1855-1870*, Sydney University Press, Sydney, 1967, 9.

⁴² Under the Constitution Act 1852 the franchise for both the House of Representatives and the Provincial Councils was granted to all males over 21 years who met the property qualification (a freehold estate worth £50 or a leasehold with an annual value of £10, or a tenement with an annual rental value of £10 or £5 depending on whether it was located in the town or the country. Inflation of property values created virtually universal franchise for European males, but left Maori effectively unfranchised until their titles were individualised: see L Cox, *Kotahitanga - The Search for Maori Political Unity*, Oxford University Press, Auckland, 1993, 35. Such individualisation was possible, but difficult in these years. Maori had to apply for an individual Crown grant, and there are some instances of this known. Not until the Native Lands Acts, however, did any general machinery come into existence for individualisation. In 1867, in any case, all Maori over 21 were granted the franchise in any event. See however R. Mulgan, *Maori. Pakeha and Democracy*, 138.

Land was acquired from Maori in these years by deed, written agreements usually following a standardised format. The deeds are in English and Maori, and contain a description of the area purchased, a list of reserves (if any), and a description of the consideration, usually a cash payment. With completion of the transaction a block would then be listed in the *Gazette* as an area over which "the Native Title has been extinguished".⁴³ To use modern terminology, the transactions were, as far as the government was concerned, intended as an extinguishment of territorial aboriginal title over the area purchased, although whether Maori vendors saw things in this light is of course a vexed question.

Too often neglected in accounts of pre-emptive purchasing before 1862 is the role played by the provincial governments in the process. Under the 1852 Constitution Act control of the alienation of Crown lands was vested in the various provinces. There was no nationwide Department of Lands or system of land alienation to settlers until after 1876. Once land had been alienated from Maori by the general government it passed to the provincial governments who controlled its alienation to the settler community by means of Crown grants. Provincial policies need much closer study, but it is clear that they varied considerably. Auckland Province was known for its policies of free grants and assistance for the small settler, policies also pursued to an extent in Wellington. The provinces of Hawke's Bay, Nelson and Canterbury, however, tended to be run by tight networks of wealthy runholders who quickly seized control of the provincial governments and who rapidly Crown-granted away former Maori land to their relatives and cronies. The Wellington Provincial Government, led by Isaac Featherston, also became actively engaged in Maori land purchasing in its own right, and some of the land purchases from Ngati Toa in the Porirua district in the later 1850s were conducted by the provincial, and not the General, government.

The Nelson/Marlborough region is a good example of how oligarchic networks in control of the provincial government took the opportunity to benefit themselves in the process of Crown-granting Maori land. As noted, Maori title in this region was extinguished by two major Crown purchases, the Wairau deed of 1847 and by the Te Waipounamu deeds, so-called, of 1852-3, all of these transactions of great significance to Ngati Toa. Control of these vast acreages then passed to the miniature oligarchies at Nelson and (after 1859, when Marlborough became a separate province) at Blenheim, who lost no time in granting the land away to an elite group of woolgrowing capitalists. In the later 1840s and 1850s the economy of Nelson and Marlborough began to develop along Australian lines in a direction quite different from the close agricultural settlement originally envisaged by the New Zealand Company settlers at Nelson. What became more important and profitable was pastoralism - that is, depasturing sheep on large runs to browse on the native grasses. This required less

⁴³ See e.g. *New Zealand Gazette*, 1863, 60 (21 February 1863) (Taheke, Te Whiti, Whangaehu, Pahaua, Taueru, Kahutara Bush, Otumanga and Whawhanui blocks).

capital investment - the main cost being the acquisition and importation of sheep from Australia - and gave more rapid returns. Runholders were already moving into the Wairau region, for example, by 1846, where they leased land directly from Maori, or acquired it from the provincial government at Nelson, often acquiring outlying sections and then depasturing sheep on the remote hills more or less as they pleased. One runholder, Constantine Dillon drew a 200-acre rural section in the Wairau in the March 1848 ballot, but he certainly did not confine his 2,000 sheep to his section but depastured them all over the remote Omaka district beyond.⁴⁴ Charles Clifford and Frederick Weld leased 200,000 acres in the area Blind River to Kekerengu. Clifford negotiated this lease directly with Rawiri Puaha of Ngati Toa and apparently paid him £12 per year for the tenancy of this vast area.⁴⁵

Settlers sometimes swapped their selections around among themselves to give themselves larger runs; some settlers, such as Henry Gouland, following complex adjustments of land allocations at Nelson, became entitled to 'compensation' sections which they reallocated amongst themselves to acquire substantial areas. Nelson and Marlborough, far from being an area of close settlement for the many, became broken up into large sheep-runs for the few. Many of these runholders were also dominant in Nelson politics and acquired powerful official positions as well (Constantine Dillon, mentioned above, became Commissioner of Crown Lands at Nelson in 1851).⁴⁶ Such a type of society and economy simply left Maori irrelevant and marginalised. The notion that their reserves would benefit from the capital investment of Europeans in the surrounding areas became a cruel joke: the runholders invested not in the land but only in sheep. The transformation in Nelson and Marlborough was of the same kind that went on at the same time in Canterbury and which has been well-described by Evison.⁴⁷ A somewhat similar process took place in Hawke's Bay, although here, as in the rest of the North Island, extinguishment of Maori title by Crown purchase was far less complete by 1862.

For all the many question marks that lie over it, pre-emptive purchase after 1847 was at least based on the notion that Maori had title to the whole country. But the nature of that title remained influenced by Lockean theory. The purchases often bore little resemblance to ordinary sale contracts, and the amount of consideration paid by the government was often merely nominal, bearing little relation to the market price. The deeds negotiated by Donald McLean, Chief Land Purchase Commissioner, and his staff, should be seen more as political

⁴⁴ McIntosh, *Marlborough*, 105.

⁴⁵ See Jeanine Graham, *Frederick Weld*, Auckland/Oxford University Press, Auckland 1983, 19.

⁴⁶ McIntosh, *op.cit.*, 108.

⁴⁷ See Evison, *Te Wai Pounamu*, 336-9. Evison's claims also that Grey pursued at this time an "alliance with Ngati Toa", an alliance which exists only, I would suggest, in Evison's imagination. It is hard to see that the mixed community of Ngati Rarua, Ngati Toa and Rangitane left at the Wairau were any better off than the Ngai Tahu communities on their inadequate reserves further south.

cessions for which the main payment was the reservation of settlements and cultivations coupled with a cash grant which bore little relation to the land's actual value. Significantly the New Zealand courts have always seen the pre-emptive deeds as political arrangements rather than as ordinary sale contracts enforceable in the courts. McLean explained to Maori chiefs that although the government's prices were certainly very low Maori would nevertheless benefit from the economic benefits that would flow from British settlement - an argument which Maori at first seemed to find convincing. With hindsight the deeds can be most criticised for failing to provide adequately for Maori reserves. Reserves could be too small, on poor land, or inadequately defined. Had the deeds been accompanied by more generous payments, more extensive reserves, and care over traditional rights of access and food-gathering the system may have endured, but in fact McLean and his staff began to act with increasing recklessness after 1853. Sinclair has judged that "McLean's desire to purchase quickly led him to underhand methods which he felt justified by his aims".⁴⁸

The theoretical basis of the pre-emptive purchasing system has been considered carefully by the Waitangi Tribunal in its newly-released *Te Tau Ihu Report* (2007).⁴⁹ The Tribunal has noted that although a 'waste lands' theory was never applied in New Zealand (that is, that areas not in 'actual occupation' vested in the Crown), a 'waste lands' policy was nevertheless applied *de facto* in many of the principal early pre-emptive purchases. The Tribunal remarked:⁵⁰

Ultimately, the parties and historians in our inquiry agreed that this purchase policy was, to a major extent, Earl Grey's waste lands policy under another name. This was submitted to us by counsel for Ngati Rarua and Ngati Tama, and by Crown counsel. Dr Phillipson (for the Tribunal), Dr Williams, Mr Walzl, and Ms Campbell (for the claimants), and Dr Loveridge (for the Crown) were all of that view. It was, in Governor Grey's words, a 'nearly allied principle': Maori could be persuaded to sell their waste lands for a nominal sum - maybe even for no payment at all, so long as their mana was acknowledged - and then their titles to land in actual occupation would be registered as reserves, just as if that had been all that they ever owned.

The Tribunal thought that this view was undoubtedly correct - as does the present writer - and the Wairau and Porirua deeds are textbook examples. The vagueness of the boundary descriptions, compared with the relatively careful definition of the reserve areas that

⁴⁸ Sinclair, *Origins of the Maori Wars*, 58-9.

⁴⁹ Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Customary Rights in the Northern Southern Island*, Wai 785, 2007 (*Te Tau Ihu*).

⁵⁰ *Te Tau Ihu*, 125.

characterises both deeds clearly shows that the deeds were not so much purchases as extinguishments in return for cash and the delineation of reserves.

Policy on reserves also evolved, and generally to Maori detriment. 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 sets this dramatic change into a context of changing policy relating to reserves and Crown purchase. In 1847 Grey advised Earl Grey as follows:⁵¹

I should also observe that the position I understand to be adopted by the New Zealand Company's Agent, that if tracts of land are not in actual occupation and cultivation by natives, that we have, therefore, a right to take possession of them, appears to me to require one important limitation. The natives do not support themselves solely by cultivation, but from fern-root, - from fishing, - from eel ponds, - from taking ducks, - from hunting wild pigs, for which they require extensive runs, - and by such like pursuits. To deprive them of their wild lands, and to limit them to lands for the purpose of cultivation, is in fact, to cut them off from some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people.

But within a few years this policy has significantly changed, with some very practical consequences for Ngati Toa in the Wairau block.

The purposes and objectives of pre-emptive deeds such as the Porirua or Wairau deeds may seem at first sight to be quite clear - to extinguish Maori ownership of a defined area described by reference to a written description and a map in exchange for cash - but this is in fact deceptive. What in fact did the parties, especially the Maori "vendors" suppose they were doing? Did Ngati Toa, when executing the Wairau and Porirua deeds, ever expect that they were clearly and definitely losing title to these vast areas (reserves excepted) To what extent was the concept of permanent alienation, despite McLean's flowery language, or even of a written deed and a survey map actually graspable by Ngati Toa at all? To which the answer must be, at least in 1847, hardly at all, at least for most members of the iwi. All they could see was that their lands were shrinking all around them and their well-being and prosperity was collapsing at the same time.

Resistance to land selling was a central policy of the Maori King movement which developed particularly in Taranaki, the Bay of Plenty and the Waikato in the late 1850s, although support was certainly not confined to these areas. Ngati Toa rangatira Matene Te Whiwhi and Tamihana Te Rauparaha (Te Rauparaha's son) played an important role in the early development of the Kingitanga, although they later seem to have become disenchanted

⁵¹ Grey to Earl Grey, 7 April 1847, GBPP (IUP)NZ, vol 6, 16-17, cited *Te Tau Ihu*, 126.

with it. There was also a certain amount of interest at the same time in a Maori parliament, a project shelved in favour of the King, but which was later revived in the late 1870s.⁵² In 1858 Potatau Te Wherowhero of Waikato was chosen as the first Maori king; he was succeeded by his son Matutaera in 1860. Matutaera was re-baptised as Tawhiao, ‘encircle the world’, by the Pai Marire religious leader Te Ua Haumene in 1864, in the midst of the New Zealand wars. The Maori King movement, the Kingitanga, was not anti-European as such. With Wiremu Tamihana it had a remarkable constitutional theorist as its most sophisticated and prominent leader, who aspired above all to create a political structure which could unite Maori and could then develop a real partnership with the government.

⁵² O’Malley, *Agents of Autonomy*, 16-17.

2 The early history of Ngati Toa

2.1 Who are ‘Ngati Toa’?

Ngati Toa are a Tainui group originally from Kawhia. Their closest connections are with Ngati Koata and Ngati Rarua. The two latter groups are now regarded primarily as South Island iwi and Ngati Koata are associated especially with Rangitoto ki te Tonga (D’Urville Island). Ngati Toa sources treat Ngati Toa, Ngati Rarua and Ngati Koata as essentially sections of Ngati Toa in the broader sense. The migration of these groups to the Cook Strait region in the early 19th century is one of the best-known and best-documented events in pre-Treaty nineteenth century Maori history.

It is important, in analysing the traditional history of Ngati Toa and their settlement in the Kapiti Coast region (and in the South Island) to carefully avoid any suggestion of ‘iwi essentialism’. Iwi and hapu identities are, and were, multiple. Descent lines cross and commingle. A simple example is Waitaoro of Ngati Tama, whose mother was Rongorongo of Ngati Toa and her father Raniera of Ngati Tama; she grew up in the Chatham Islands with Ngati Mutunga and is regarded today as an elder of Ngati Tama, Ngati Mutunga, Ngati Toa and Ngati Maniapoto.⁵³ The famous Ngati Toa rangatira Matene Te Whiwhi, for example, was not only Ngati Toa. In the *Kukutauaki* case (1872) in the Native Land Court he said that “I belong to the Ngati Toa, Ngati Awa and Ngati Raukawa”.⁵⁴ Similarly, Tamihana Te Rauparaha told the Native Land Court that he was “partly Ngati Raukawa and partly Ngati Toa”.⁵⁵ In the *Himatangi* case (1868) Henere Te Herekau said that “I am a Ngati Raukawa and Ngati Toa and Ngati Awa and live at Manawatu”.⁵⁶ These examples can be readily multiplied. Or, one can pay a visit to the cemetery at St Luke’s Anglican church at Waikanae and simply read the headstones. Wi Parata Te Kakakura Waipunaahu is “Ngatitoa me Ngatiawa”; Onau Te Kakakura, “he wahine rangatira” of “Ngati Toa, Ngati Raukawa me Ngati Awa”. Te Rauparaha is quintessentially Ngati Toa, but some regarded him as primarily Ngati Raukawa,⁵⁷ and of course his mother, Parekohatu, was Ngati Raukawa. The linkages were certainly overlapping and complex.

⁵³ On Waitaoro see Angela Ballara, “Waitaoro”, *Dictionary of New Zealand Biography*, vol 2, 261.

⁵⁴ *Kukutauaki* case, (1872) 1 Otaki MB 1, 135.

⁵⁵ *Otaki Townships* case, (1866) 1 Otaki MB 24.

⁵⁶ *Himatangi* case, (1868) 1 C Otaki MB 54.

⁵⁷ Rawiri Te Whanui (Ngati Raukawa), *Himatangi* case, (1868) 1 C Otaki MB 231.

2.2 Te Rauparaha

Te Rauparaha was clearly someone quite exceptional. When Octavius Hadfield met him for the first time he thought Te Rauparaha “certainly looked more like a chief than any man I have yet seen”.⁵⁸ His name was known throughout the country. Even after his return from captivity in Auckland William Fox thought that Te Rauparaha’s name “was a tocsin, to the sound of which, in the case of disturbances elsewhere, the natives might yet have responded”.⁵⁹ (Fox, it should be added, painted extremely hostile portraits of both Te Rauparaha and Te Rangihaeata.⁶⁰) Te Rauparaha’s fame and mana was the very reason the government kidnapped him: as one contemporary - and not very sympathetic - army officer (W T Power) put it, “[t]he capture of Rauperaha [sic], and the suddenness and energy with which it was done, paralysed the efforts of our enemies in the south, who all feared some similar surprise for themselves...With such a hostage in our hands, we could command the *neutrality*, at any rate, of many of the tribes...”⁶¹

After the Battle of the Wairau in 1843 many people of the northern South Island retreated to the north, after first taking shelter in Queen Charlotte Sound, and there they told the Reverend Samuel Ironside that “they are fully determined to defend their chief [Te Rauparaha] even to the death”.⁶² At a meeting held at Waikanae (the main Ngati Awa base in the Cook Strait region) held in 1843, just after the Wairau, Rere Tawhangawhanga and the other Ngati Awa chiefs told Clarke and Shortland that “if measures were taken against [Te Rauparaha] they would no longer place confidence in the justice of the English, and would die with the father and leader of their tribes”.⁶³ Te Rauaparaha was very confident and assured of his pre-eminence and position and would assert it publicly when he felt it necessary. At a meeting with Ngati Raukawa in 1843 Te Ahu Karamu publicly reminded Te Rauparaha of the many and varied actions he carried out to aid the coalition. Te Rauparaha in reply agreed that Te Ahu had performed many valuable actions “but reminded him that he was only one of his, Rauparaha’s, generals that he, Rauparaha was their chief, their general, their king, that they could not act independently of him”. “A great deal” was said on both sides but “[i]t ended in Rauparaha’s having his way”.⁶⁴ When Te Rauparaha was brought back to Porirua in 1848 he was taken home by three of the leading rangatira of the country, Te Wherowhero (later King

⁵⁸ Hadfield diary, reprinted in Macmorran, *Octavius Hadfield*, 158.

⁵⁹ Fox, *The Six Colonies of New Zealand*, 74. In fact his book, published in 1851, is a mine of New Zealand Company prejudices.

⁶⁰ Fox, *Six Colonies*, 74-75.

⁶¹ W T Power, *Sketches in New Zealand*, 50.

⁶² Ironside Journal, MS 3817/2, Alexander Turnbull Library, entry for 8 July 1843.

⁶³ Official report of George Clarke jr., 16 August 1843, *Appendix to Report of 1844 Select Committee on New Zealand*, BPP (NZ), Irish University Press ed., vol 2, 337.

⁶⁴ Highlights in the life of William B White, typescript, MS 4524, Alexander Turnbull Library, 15.

Potatau), Taraia, the great chief of Hauraki, and Te Horeta, leading chief of the East Coast. He was brought to Otaki. According to Matene Te Whiwhi “all the tribes were gathered together to mihi over Potatau and Te Rauparaha being returned”.⁶⁵ All of the “southern tribes were gathered together: Ngati Raukawa, Ngati Toa and Ngati Awa”.⁶⁶

2.3 Ngati Toa’s migration to the Kapiti Region from Kawhia

Ngati Toa sources state that the iwi was a complex grouping made up of three sub-tribes:⁶⁷

Listen to the names of our sub-tribes: Ngaati-Toa is the first, Ngaati-Koata is the second, Ngaati-Rarua is the third. In all they form Ngaati-Toa, whose motto is “Mangoo of the sharp ears”.

In his claim in the Rohe Potae case to Kawhia, Major Te Wheoro of Ngati Mahuta gave the following names for the tribes of the Kawhia region:⁶⁸

I claim this land by right of conquest over the former people of Kawhia, viz. over Ngatitoo and Ngatikoata and Ngatiariari and Ngatihuangaparoa. These latter are subdivisions of Ngatikoata.

Pei Te Hurunui gives four hapu as belonging to Ngati Toa: Ngati Koata, Ngati Toa, Ngati Akamapuhia and Ngati Rarua. They occupied a narrow strip of coast stretching from Aotea to Huikomako, about 80 miles south of Kawhia. According to him, the north side of Kawhia, site of the present town, was occupied by Ngati Koata; Ngati Toa were based on the south side, and Ngati Akamapuhia and Ngati Rarua further south.⁶⁹

In the 1820s there was a massive displacement of the peoples of the Waikato coast and North Taranaki: of Ngati Toa, Ngati Koata, Ngati Rarua, Ngati Tama, and Ngati Awa, and a little later of Ngati Raukawa of the Maungatautari region of the Waikato.⁷⁰ These cycles of movement and displacement reached their farthest extent with Ngati Mutunga and Ngati

⁶⁵ Evidence of Matene Te Whiwhi, Puahue case, (1868) 2 Waikato MB 78.

⁶⁶ Ibid. It was on this occasion that Te Wherowhero invited Ngati Awa to return home to Taranaki, which they mostly did.

⁶⁷ Bruce Biggs (ed), “Two letters from Ngaati-Toa to Sir George Grey”, *Journal of the Polynesian Society*, vol 68, 262, 276, citing letter of 11 December 1851.

⁶⁸ (1886) 1 Otorohanga MB 191.

⁶⁹ See Pei Te Hurunui’s maps in *King Potatau*, Polynesian Society, Wellington, 1959, pp 69-70.

⁷⁰ On the background see H and J Mitchell, *Te Tau Ihu o Te Waka* (2004), pp 101-103.

Tama's invasion and settlement of the Chatham Islands in 1835 and Te Puoho of Ngati Tama's bold and reckless attempt to attack Ngai Tahu in Southland where they least expected it in 1837.⁷¹ By the time the migrations were over with, not only were Ngati Mutunga (and sections of Ngati Tama and Ngati Haumia) established on the Chatham Islands, but Ngati Toa, formerly of Kapiti, were at Porirua, Kapiti, Pelorus Sound and the Wairau Valley, Ngati Koata at Rangitoto, Ngati Rarua in various parts of the northern South Island, Ngati Awa at Waikanae, Arapawa, parts of the Sounds, Wellington and other parts of the Northern South Island, and Ngati Tama in many places as well (Port Nicholson, the Chathams, Nelson, Golden Bay). This expansion, or displacement, came at the expense of the existing populations of the Cook Strait region and the Chathams, some of whom, however – such as Rangitane – had previously themselves migrated to the area and overthrown earlier groups.

The migrations from the Kawhia region have recently been analysed comprehensively by Ballara.⁷² The conflicts were not, in her view, conflicts between “the widest kin categories”, and they were “probably *not* brought on by a population explosion”.⁷³ Ballara argues that although the conflicts around Kawhia might appear at first sight to be conflicts over land and coastal territory, this was not really the case. Nor than these conflicts be called ‘musket’ wars in any meaningful sense: muskets played no significant role in the fighting at Kawhia at least until the time when Ngati Toa moved south to Taranaki.⁷⁴ The situation was, rather, one where provocation and counter-attack had gone so far that a peaceful resolution was no longer possible. This seems a very convincing interpretation. As Ballara writes:

They [the escalating conflicts around Kawhia] were local disputes gone sour: disputes over resources, curses, insults and chiefly rivalry – all the usual potential causes of disputes between independent groups – which, it was intended, would be settled by war. As people of

⁷¹ Te Puoho was of course defeated and killed by Ngai Tahu at Tuturau in Southland, probably in January 1837, although the actual date of this engagement is unclear: see Atholl Anderson, *Te Puoho's Last Raid*, Otago Heritage Books, Dunedin, 1986. 74-6. Te Puoho was shot dead by Topi Patuki of Ngai Tahu, after which the rest of the taua surrendered and were kept prisoner on Ruapuke. The highest ranked prisoner, Te Kiore, was returned to Otaki with his Ngai Tahu wife in about 1843.

⁷² See Ballara, *Taua*, Auckland University Press, 2003, pp 278-314.

⁷³ Ballara, *Taua*, 281.

⁷⁴ See Ballara, *Taua*, 282:

Te Rauparaha had taken his people away from Kāwhia before any traders dealing in muskets visited or settled in the area. They had left about September 1821, as a result of local defeats in war and the bargain struck in subsequent peace-making, and were unaffected by the ‘musket’ battles at Mauninaina and Te Tōtara in November and December 1821. By the time of these battles, the first stage of the migration was over and the Kāwhia people had reached Taranaki. They had left Kāwhia nearly a year before the battle at Mātakitaki in 1822, in which muskets also played a decisive role. The few Ngāti Koata and others who fought and died in that battle were those who had elected to stay in their homelands when the rest left, usually under the protection of Waikato groups. Muskets were not important as a catalyst in the wars in Kāwhia in the first two decades of the nineteenth century.

high rank and many kin connections were killed or captured, however, allies who were kin to them were brought in on both sides to assist in the relentless and inevitable search for utu, and the wars continued and expanded until they had reached intolerable levels. Something had to give. Te Rauparaha and Te Hiakai were among the leaders on either side who realised that these disputes had gone too far; healing the breaches by peace-making was no longer possible. The only solution was a radical physical and geographical parting of the combatants: the complete removal of those on one side, not just south into contiguous territory, but leap-frogging a long distance beyond the territories of any related kin. One effect of this drastic solution was that land changed hands. If these can be considered land wars, it is not through their causes but in their results.

The first major reconnaissance to the south in 1819-20 was clearly seen as a very significant event by the Ngati Toa leadership. Ngati Toa sources pay very close attention to it.⁷⁵ This “great journey to the south was at least the third such taua he [Te Rauparaha] had undertaken, fitting them in between the Kāwhia campaigns”.⁷⁶ The expedition was comprised of Te Rauparaha and Te Rangihaeata and some of their supporters, together with a substantial contingent of Nga Puhi from the Bay of Islands led by the great chiefs Nene (Tamati Waka Nene), Patuone and Taoho. This expedition is richly documented in both in manuscript and Minute Book sources.⁷⁷ All the accounts mention how the invading force sighted a European ship passing through Cook Strait, and how they lit fires to attract the ship – which were ignored. Biggs’s guess is that the ship was in fact Russian, part of Bellinghausen’s fleet which is known to have sailed through Cook Strait on 9 June 1820. Although there have been suggestions that other Waikato or Taranaki groups participated on this expedition, none of

⁷⁵ See Ballara, *Taua*, 301-303; also Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 19. The Waitangi Tribunal summarises events as follows:

In 1819, a Ngapuhi-led taua (war party) armed with muskets raided Te Upoko o te Ika. Ngati Toa warriors, including the chiefs Te Rauparaha and Te Rangihaeata, joined the taua at Kawhia. The invaders fought with Ngati Ira at Te Whanganui a Tara, and they acquired knowledge of an area which from that time on would be coveted by Te Rauparaha, though none of the taua remained to occupy the land. This seems to have been the only pre-1840 fighting within the area that became the Port Nicholson block in which Ngati Toa were themselves involved. While accompanying this taua, Te Rauparaha noted the benefits of trade and safety offered by Kapiti Island. He also arranged the marriage of his nephew Te Rangihaeata to Te Pikinga of Ngati Apa in order to ensure future connections and welcome on Ngati Toa’s expected return to Te Upoko o Te Ika.

⁷⁶ Ballara, *Taua*, 301.

⁷⁷ B Biggs (ed), “Two Letters from Ngaati-Toa to Sir George Grey”, *Journal of the Polynesian Society*, vol 68, 262, at 268, citing evidence of 11 December 1851; evidence of Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 195-6; evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 135; evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1 C Otaki MB 372-3; evidence of Wi Parata, Ngarara rehearing case, (1890) 10 Otaki MB 144-55. See also Waitangi Tribunal, *Te Whanganui a Tara*, 19.

this wealth of material gives any indication that any groups apart from Ngāti Toa and Ngāpuhi played any role in it.⁷⁸

The journey south decisively impacted on Te Rauparaha's thinking. As a result of this expedition Te Rauparaha began to reflect on the many advantages of the Kapiti coast as a place of resettlement for his people. As analysed by Ballara, who relies mainly on Tamihana Te Rauparaha's biography of his father, there were three main 'pull' factors: trade with Pakeha shipping (and especially the opportunity to acquire muskets), the greenstone of Te Waipounamu, and the rich food resources of the Cook Strait district. Ballara's analysis is as follows:⁷⁹

Back in Kāwhia, Te Rauparaha's decision to take south the various hapū under his protection had been made easier by his year-long reflection on the attractions of the lands there, As Tāmihana Te Rauparaha put it, 'kāhore he ao, kāhore he pō' (not a day or night) passed in Kāwhia without a new taua arriving from Waikato or Maniapoto in a relentless search for utu. But while Te Rauparaha went through the motions of fighting them off, his thoughts were dwelling on the possibilities of the southern lands he had seen in his travels of 1819-20. One of his first thoughts was that Pākehā ships were to be seen there, and in other places they traded in muskets. Te Rauparaha had seen enough of muskets in action to know that their acquisition in sufficient numbers would be a protection for his much-beleagured people, and would help him to subdue the tangata whenua in the new territory.

Beyond Kapiti lay Te Waipounamu and its greenstone:

In addition, beyond 'Wairarapa', as it was first known to him, or 'Kapiti', as he later began to call the whole district, lay Te Waipounamu (the South Island), the source of greenstone. All chiefs craved greenstone: the possession of a mere...made from this material was above all the mark of a chief. Wars could be ended and peace made when a single slab or weapon made of greenstone changed hands. Perhaps because he was a younger son the chiefly family of a junior hapū within Ngāti Toa, Ngāti Kimihia (Kimihia was the younger sister of Te Maunu, eponymous ancestor of the senior hapū, Ngāti Te Maunu), Te Rauparaha craved greenstone perhaps more than any other treasure of the Māori world. While on the southern taua of 1819-20, he had been presented with some fine slabs by Ngāti Apa and consequently made these people his allies rather than his slaves.

⁷⁸ See also Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 22-27. Professor Ward is unpersuaded by the arguments made by Neville Gilmore that there was substantial Ngāti Awa participation in this first taua or that on this occasion there was some kind of allocation of rights at Port Nicholson to Ngāti Awa. Gilmore's claims "are very large" and "I am not persuaded that they are supported by the evidence": *ibid.* 24. Nor is there any indication in Ballara's *Taua* that groups apart from sections of Ngāpuhi led by Nene and Patuone and Kāwhia peoples led by Te Rauparaha participated.

⁷⁹ Ballara, *Taua*, 318.

Then there were the food resources of Cook Strait.⁸⁰

Te Rauparaha had also seen the richness of the food resources of the south, and had noted that, compared with the central North Island, a relatively small population was exploiting them.

As Professor Ward puts it, “virtually all sources agree that a new phase of deliberate migration to and occupation of the south began about 1822, that it was initiated by Ngati Toa and that Te Rauparaha was the driving force among the Ngati Toa chiefs, increasingly under pressure in their struggles with Waikato and Ngati Maniapoto neighbours”.⁸¹ After a futile search for allies against Ngati Toa’s Waikato enemies, when he visited Taupo, Rotorua and Tauranga as well as his mother’s people of Ngati Raukawa,⁸² Te Rauparaha and the Ngati Toa leadership led their people from the Kawhia region to North Taranaki. This first stage of the migration is referred to as ‘Te Heke Tahutahuahi’ or the ‘fire lighting’ expedition. Ngati Toa’s departure was a mixture of both push and pull factors – a combination of the pressure the Kawhia descent groups were under from their Waikato neighbours and the attractions of the Cook Strait area as a place to settle and trade with the Pakeha. Ngati Toa Minute Book sources indicate that this was a timed and strategic withdrawal rather than a flight in the midst of a battle. Tamihana Te Rauparaha, who presumably would have learned of the details from his father, says in fact Te Rauparaha “bade farewell to [the Waikato chiefs]” and then left, “about 340 men, besides women”:

They left Kawhia – burnt homes – wept, reached Taranaki, Ngati Awa country.

Some Waikato sources indicate that Te Rauparaha gifted the land around Kawhia to various Waikato groups.⁸³ Whether or not that is the case, in Ballara’s view it is clear that Ngati Toa left “with mana intact”.⁸⁴ Te Rauparaha “had avoided the defeat, capture and enslavement of his people”.⁸⁵ In Taranaki Ngati Toa were joined by sections of Ngati Awa⁸⁶

⁸⁰ Ibid, 319.

⁸¹ Alan Ward, *Maori Customary Interests in the Port Nicholson Block*, 1998, Wai 145 Doc#M1, 28.

⁸² Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 135; Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 392; Pateriki Rei, Ngati Toa s. 30 case, 20 Nelson MB 168; Tataniko Whautaupiko, Ngakororo 3B case, (1891) 16 Otaki MB 346-7.

⁸³ See the discussion in Ballara, *Taua*, 309.

⁸⁴ Ibid, 310.

⁸⁵ Ibid.

⁸⁶ 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

who then accompanied them on the journey south.⁸⁷ As this second heke, known as ‘Tataramoa’, or bramble bush, moved southward from Wanganui they met with a friendly reception from Ngati Apa – Te Rangihaeata’s wife, Pikinga (or Pekenga) was herself Ngati Apa. According to Hohepa Tamaihengia “we came to Rangitikei and lived with Ngati Apa as friends [for] two months.”⁸⁸

2.4 Ngati Toa in the Cook Strait Region

The process of Ngati Toa settlement and consolidation in the Kapiti region had a number of vicissitudes. There was a long and grim struggle with Muaupoko of the Horowhenua area. At Waikanae the Ngati Toa chief Te Pehi’s children were killed in a night attack by Ngati Kahungunu. Te Pehi then, evidently to ensure that the military balance would swing decisively in Ngati Toa’s favour, got aboard a whaling ship in Cook Strait and travelled to England to acquire guns. Nopera Te Ngiha says that at the fight with Ngati Kahungunu Te Rauparaha’s own gun was taken, and that Te Pehi “followed a vessel and overtook it – Pehi jumped on board and held on to the bulwarks – was taken away and was away four years”.⁸⁹ He did not come back home until after Waiorua.⁹⁰ This seems to indicate that until this time the invaders had few guns, and thus no particular technological advantage over the local people.

Te Peehi Kupe’s coming on board the *Urania* is also described in J L Craik’s *The New Zealanders*:⁹¹

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’.

⁸⁷ Eyewitnesses vary in their estimates of the number involved. Tamihana Te Rauparaha, as noted, said that 340 men “besides women” left Kawhia. Matene Te Whiwhi, however, in the Himatangi case, said that “then came one hundred Ngati Toa – unaccompanied by Ngapuhi – on reaching Taranaki they were joined by Ngati Awa – making up number to 500 or 600 – came to Waitotara”: (1868) 1 C Otaki MB 192. The discrepancy may be explained by the fact that according to some sources Te Rauparaha himself left the main heke and went to call on Ngati Raukawa before rejoining the main party at Wanganui: see Nopera Te Ngiha’s evidence, Himatangi case, (1868) 1 C Otaki MB 392.

⁸⁸ Himatangi case, (1868) 1 C Otaki MB 399. See also Waitangi Tribunal, *Te Whanganui a Tara*, 20.

⁸⁹ (1868) 1 C Otaki MB 393.

⁹⁰ Both Nopera Te Ngiha, who was at the battle himself, and Wi Parata state specifically that Te Pehi was away in England and missed the battle: (1868) 1 C Otaki MB 394; (1890) 10 Otaki MB 158.

⁹¹ J L Craik, *The New Zealanders*, Charles Knight, London, 1830, cited H and J Mitchell, op.cit., 115-16.

While the *Urania* was sailing through Cook's Strait...three large canoes, containing together between seventy and eighty natives, were seen making for the vessel, to the no small alarm of the crew, who prepared, however, to give the savages a warm reception in case their intentions should prove to be hostile. As the largest canoe approached, one of the natives in it stood up, and by signs and a few words of broken English intimated his desire to be taken on board. This was Tupai Cupa [sic]. His request was refused by Captain Reynolds, who was apprehensive of some treachery; but as it was observed that there were no arms in the canoe, it was suffered to come close up to the ship. On this the resolute savage, though the Captain still persisted in declining to receive him, sprang from his place among his countrymen and in an instant was on the deck. The first thing he did after getting on board was to order the canoes to retire to some distance. This was to show that his intentions were entirely peaceful. He then by signs not to be mistaken asked the Captain for fire-arms; and when his request was refused, he immediately announced the determination he had formed of proceeding, in spite of all opposition, to England.

Anderson and Pickens say in their *Wellington District Rangahaua Whanui* report that at this time "matters appear to have been fairly evenly balanced" and that "small victories were scored by either side", and my impression is that this is correct.⁹² According to Ngati Toa sources Ngati Awa mostly returned to Taranaki at this time, i.e. before the battle of Waiorua. According to Matene Te Whiwhi:

This was the beginning of the fighting – fighting for three years 'pa horo' Muaupoko at Horowhenua. Went to Kapiti – Ngati Awa returned leaving ten.

The key event marking the definitive establishment of Ngati Toa in the Cook Strait area was the battle of Waiorua. Most writers emphasise the importance of this engagement as establishing Ngati Toa hegemony.⁹³ The extent to which groups other than Ngati Toa were instrumental in achieving the famous victory has been a matter of debate.⁹⁴ Anderson and

⁹² See Anderson and Pickens, *Wellington District, Rangahaua Whanui District* 12, 1996, 10.

⁹³ For example Jane Luiten, *Whanganui ki Porirua*, Wai 52 Doc# A1, 1992, p. 5; McEwen, *Rangitane*, 97; Carkeek, *Kapiti Coast*, 23; Burns, *Te Rauparaha*, 36. The Waitangi Tribunal has accepted that 'Waiorua broke the strength of the Whatonga-descent groups' although it 'did not finish this resistance': Waitangi Tribunal, *Whanganui a Tara*, 21.

⁹⁴ This was a matter of considerable debate in the Wellington Tenth's hearing. This probably need not be traversed here. Ngati Toa sources tend to stress that Ngati Awa had returned home to Taranaki before the battle. Matene Te Whiwhi said that "we went to Kapiti", and "Ngati Awa returned [home], leaving ten": Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 197. Tamihana Te Rauparaha wrote that once the invaders had settled at Otaki and Waikanae "some of the Ngati Awa then returned to Taranaki": Tamihana Te Rauparaha, *Life and Times of Te Rauparaha*, 26. His account of the battle in *ibid* sees it as a Toa victory in which Te Rauparaha personally led the defence: of course it may be said that Tamihana Te Rauparaha would naturally seek to magnify his father's role, which may be true, but which does not of itself mean that his account is untrustworthy. In my view the Wellington Tribunal has too readily accepted Ballara's views on this and has not paid sufficient

Pickens note that “[t]here seems to be little certainty about which migrant tribes other than Ngati Toa were involved”.⁹⁵ The battle is richly documented in the Otaki Minute Books although the details vary to some extent. Tamihana Te Rauparaha said that “the Whanganui, Ngati Apa, Muaupoko, Rangitane, Ngati Kahungunu and Rangitane from the other [i.e. South] Island joined to attack Rauparaha and Ngati Toa”.⁹⁶ The enemy fleet crossed to Kapiti at night: “at daybreak the attack”:

Have heard that there were not more than eighty. Sixty, I heard. This sixty attacked and routed the two thousand. Ngati Toa chased them. This was the end of the fighting.

Nopera Te Ngiha, who was present at the battle, said that “a large body” of “Nga Rauru, Whanganui, Ngati Kahungunu, Ngati Apa, Rangitane and people from to Waikanae. The details coincide with Tamihana.”⁹⁷

About 2 am [they] arrived at Kapiti. About 4 or 5 am, the attack made. We had been aroused by those who had heard the ‘papa’ of the ‘wakas’ – 70 ‘topu’ of us turned upon them. Waiorua was the name of this battle.

And Matene Te Whiwhi:⁹⁸

We remained near Waikanae for a week and then [went?] off to Kapiti, and while we there the people arrived from the Middle Island at Waikanae secretly. They only lit their fires at night. When they had all collected from Whanganui, Wairarapa, Rangitikei, two of Rauparaha’s children were up in a tree and saw the fires at Waikanae. This was the first time we knew of their being there. Rauparaha and Rangihaeata wanted to cross to the mainland in the morning. During the night those thousands of people who were at Waikanae came [] their canoes and came to the East side of the Island, Waiorua. They wanted to attack at night. Kekerengu said, Let us wait till morning. Some of our people heard them disputing and came and reported it at

attention to Ngati Toa accounts. However the Wellington Tribunal accepts (p 21) that “the victory undoubtedly enhanced the reputation of Te Rauparaha, who was regarded as the heke’s main leader”. See also the discussion in Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 37-42. Ward’s overall conclusion (ibid, 42) is that:

I am reluctant to build a mountain of interpretation upon any one of the Land Court statements. All witnesses tend to advance the mana of their particular groups and, not surprisingly, blur one event of the southern migration with another. There is enough in the various sources, however, to indicate that a considerable number of Ngati Awa groups had remained at Kapiti and played an important role in helping sections of Ngati Toa repel the attack on Waiorua pa.

⁹⁵ See Anderson and Pickens, *Wellington District*, 10.

⁹⁶ (1868) 1 C Otaki MB 375.

⁹⁷ Himatangi case, (1868) 1 C Otaki MB 393.

⁹⁸ Kukutauaki case, (1872) 1 Otaki MB 140.

the Pah. At 4am the Pah was attacked. Just after dawn the Pah was taken. The people who attacked were defeated. The canoes were close together and covered the space between Waikanae and Kapiti. Waiorua is the name of the battle. Five of them were spared.

The battle is also described in the first of the two letters to Grey published by Biggs in 1959.⁹⁹ This gives the tribal opponents of Ngati Toa as Ngati Apa, Muaupoko, Ngati Kahungunu, Rangitaane, Hamua, Ngati Tumatakokiri (the pre-Rangitane people of Golden Bay), Ngati Kuia, Ngai Te Heiwi, Ngati Whakamana and Ngai Tawake. This source names six individuals who were spared: Te Rimurapa and Te Kiwa of Ngati Kahungunu, and Tutepourangi, Tautioma, Tukihono and Waimea “from Whakatu and Motu-eka”.

If there is some variance in the details, there is little doubt that the battle created a tremendous impression and that the mana of Te Rauparaha received a major boost. Following the battle, says Tamihana Te Rauparaha, “Rauparaha’s fame reached the South Island”.¹⁰⁰ According to Matene Te Whiwhi “the news of this went all over and the people knew that Rauparaha had defeated all these tribes”.¹⁰¹ As Professor Ward has put it, “the defence as a whole can be properly regarded as a victory for the leaders of the heke, that is Ngati Toa”.¹⁰²

Although it was certainly not just Te Rauparaha’s victory, the tangata whenua and many of the allied invaders undoubtedly regarded it as such. Mr Boast cites several Land Court witnesses to that effect and he could have cited more, for the record is full of ‘Te Rauparaha’s’ conquest of the tangata whenua: Te Rauparaha was singled out by adversaries both for awed respect and for taunting challenges. Although Mr Boast’s witnesses are Ngati Toa, the record in general and over several decades speaks too loudly of Te Rauparaha’s formidable reputation for it to be denied.

Angela Ballara, although inclined to emphasise the role of Ngati Toa’s allies in the battle, nevertheless agrees that the victory was certainly *seen* as Ngati Toa’s – and, indeed, Te Rauparaha’s – great victory.¹⁰³

The result of the battle was a resounding loss of mana and morale for the victorious tangata whenua peoples living on both sides of the strait. As Mātene Te Whiwhi put it with little exaggeration, at Waiorua ‘all the tribes were defeated from Patea to Wairarapa and from Te Tai Tapu to Kaikoura’. Despite the role played by Ngāti Toa’s allies, the Waiorua victory

⁹⁹ See Biggs, “Two letters from Ngaati-Toa to Sir George Grey”, *Journal of the Polynesian Society*, vol 68, 1959, 262-76 (letter of December 11 1851).

¹⁰⁰ Himatangi case, (1868) 1 C Otaki MB 372

¹⁰¹ Kukutauaki case, (1872) 1 Otaki MB 141.

¹⁰² Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145

Doc#M1, 42.

¹⁰³ Ballara, *Taua*, 337.

established the unquestioned dominance of Ngāti Toa and especially of Te Rauparaha for a crucial period of several years, It was the peoples of Te Rauparaha's migration, whom he inspired and led, who won the victory, and, whether he fought in the crucial stages of the battle or only in the aftermath, it was widely regarded as his victory. His dominance was confirmed not only over the island, but over the adjacent coast as well, and reinforced by his subsequent campaigns.

And the Waitangi Tribunal agrees with this. To cite from the Tribunal's recent *Te Tau Ihu o Te Waka a Maui* report (2007):¹⁰⁴

Waiorua (named after the site of the conflict) was a serious defeat for the Kurahaupo forces (variously estimated at between 600 and 2000 people) and while a single engagement could not wholly decide the fate of the Cook Strait region – or its entire 'ownership' – it still had important consequences for patterns of power and settlement. The most important of these was the loss of mana for the Kurahaupo tribes. The ascendancy of the incoming tribes was established, enabling them to undertake further migrations from the Kapiti Coast to settle the Whanganui a Tara (Wellington) and Te Tau Ihu lands. While Ngati Koata and Te Atiawa were involved in Waiorua, alongside Ngati Toa, it was the mana of Te Rauparaha and Ngati Toa that was most enhanced. Te Rauparaha's personal role in the battle was largely irrelevant; the credit went to him as the prime mover of the heke and the main war leader of the Kawhia-Taranaki forces.

Waiorua had a major impact on Maori geopolitics. The victory opened a path for other iwi to come south. According to Wi Parata, "when all the tribes had heard of this and that Ngati Toa had not been beaten, the first heke came down because the coast was clear".¹⁰⁵ Various groups moved south. "In the fourth year", says Matene Te Whiwhi, "came Ngati Awa and Ngati Tama".¹⁰⁶ In his 1872 evidence Matene said that after Waiorua Te Puoho of Ngati Tama "came from the North to see how we were getting on"; about seventy men came south on that occasion, Ngati Tama and Ngati Whakatere. Te Puoho "saw that we were all right" and went back; the following summer a large group of Ngati Whakatere [i.e. Ngati Awa?] and Ngati Tama came south: "they were now commencing to migrate". The order of the various heke is confused.¹⁰⁷

¹⁰⁴ Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island*, Wai 785, 2007, p 30.

¹⁰⁵ (1890) 10 Otaki MB 158-9.

¹⁰⁶ (1868) 1 C Otaki MB 197.

¹⁰⁷ For example Wi Parata says that after Waiorua Ngati Mutunga came south first, followed by Ngati Tama: (1890) 10 Otaki MB 158-9.

The biggest single migration, and perhaps the most important one for Ngati Toa, was that of Ngati Raukawa with whom there were close kin links.¹⁰⁸ Ngati Raukawa's heke and their various adventures beforehand¹⁰⁹ and on the way south are, as one might expect, fully detailed in the Otaki and Waikato minute books.¹¹⁰ Reading these sources together there seem to have been three separate Ngati Raukawa heke. The first group was led by Te Whatanui and Taratoa, who came south to see their kinsman Te Rauparaha and to obtain some guns. The next year a smaller group led by Te Ahu Karamu came south, and while they were at Kapiti Te Rauparaha, with, it seems, the somewhat reluctant consent of other Ngati Toa rangatira, decided to allocate a substantial amount of land to Ngati Raukawa.¹¹¹ At that time some of Ngati Awa who were living at Otaki were asked, or told, by Te Rauparaha to move south to Waikanae, which they did. The following year the main Ngati Raukawa body came south, led by Te Ahu Karamu. For a time they stayed at Kapiti before moving north to consolidate their position in the Horowhenua. They were allocated territory north of Waikanae and centred around Otaki. Ngati Raukawa accounts in the Waikato and Otaki minute books basically confirm this picture.¹¹² According to Carkeek Waitohi (Te

¹⁰⁸ See the discussion by the Waitangi Tribunal in *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, p 23-24. The Tribunal states that 'the arrival of Ngati Raukawa caused tension among the incoming tribes' (p 23). At *ibid* p 25 the Tribunal reconstructs events as follows:

The arrival of Ngati Raukawa in the region increased the desire for independence from Te Rauparaha on the part of the Taranaki tribes. Ngati Raukawa were Te Rauparaha's kin, but they were traditional enemies of the northern Taranaki tribes. Their presence in the region therefore put immediate pressure on the northern Taranaki tribes, and eventually led to Ngati Mutunga's departure for the Chatham Islands.

This may be to over-simplify developments somewhat.

¹⁰⁹ In April 1828 Ngati Raukawa assisted Ngati Maru in an attack on Tauranga: see evidence of Houwhenua Te Patu (Whanau a Tauwhao), Motititi Section 7 case, (1884) 2 Tauranga MB 223.

¹¹⁰ See eg evidence of Hohepa Tamaihengia, Himatangi case, (1868) 1 C Otaki MB 398; evidence of Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 376; evidence of Matene Te Whiwhi, Puahue case (Maungatautari), (1868) 2 Waikato MB 76-77. See also Waitangi Tribunal, *Te Whanganui a Tara*, 23.

¹¹¹ For fuller discussions of the Ngati Raukawa migration see Boast, *Ngati Toa in the Wellington Region*, 60; Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 60-63.

¹¹² For example in Wairongomai case of 1869 Rota Te Tahiwahi of Ngatimaiotaki (a Raukawa group) said that "Te Rauparaha came to this district and acquired the land hereabouts by conquest. He sent Hukiki to Taupo to fetch his people the Ngati Raukawa to occupy the land. We all first went to Kapiti and afterwards came over to the mainland to Kotikoti whenua": (1869) 1 G Otaki MB 99-100. See also E J Wakefield, *Adventure in New Zealand*, vol 1, 118: "E Ahu Karamu returned to Taupo, and related to the rest of his tribe how fine an opening had been made for them on the sea-coast, dwelling on the advantages to be derived from fishing and trading with the White men. He bore Rauperaha's [sic] invitation to the other chiefs to lead their men to Cook's Strait, where he would assign them a part of his conquest to enjoy and maintain, while they assisted him in crushing the remnants of the insurgents about Rangitikei and Manawatu. The conflicting opinions as to the expediency of this course were peremptorily terminated by E Ahu, who ordered his young men to burn the houses at Taupo; and the Ngati Raukawa migrated in successive bodies to the coast. Rauperaha then proceeded with their assistance to crush the remnants of the aboriginal tribes; and only spared the lives of the few Muopoko now existing in that neighbourhood at the urgent entreaty of Watanui, a great chief of Ngati Raukawa, to leave them as slaves for him."

Rauparaha's sister) played an important role both in inviting Ngati Raukawa south and in allocating areas of settlement.¹¹³

In a petition written in 1880 the Ngati Raukawa leadership described events as follows:¹¹⁴

When Te Whatanui came to Kapiti on a visit to Te Rauparaha, Te Whatanui first saw Europeans and guns. On the departure of Te Whatanui for Maungatautari, Te Rauparaha in bidding him farewell said, go, and when you see Ngatiraukawa bring them to live upon my land at Whangaehu, Rangitikei, Manawatu and Otaki. When Te Whatanui came with his people to live upon the lands they found it without inhabitants, that is the sea coast. All the people (Nga morehu i.e. remnants) of those tribes that had not been killed had gone to the bush, to the mountain, for fear of Te Rauparaha and his Tribes.

When Ngati Raukawa arrived they went to Kapiti to meet Te Rauparaha. Te Rauparaha said that Ngatiraukawa were to locate themselves between Whangaehu and Kukutauaki – the boundary of Ngatiawa, and were to include Turakina Rangitikei and Manawatu. Some of Ngatitua belonging to Te Rauparaha and Te Rangihaeata also resided with Ngatiraukawa. Te Rauparaha also told Te Whatanui to exterminate all the people of Ngatiapa, Rangitikei, Rangitaane and Muaupoko, that the land ought to be free for Ngatiraukawa and for his own tribe to live upon. Te Whatanui did not consent to those words of Te Rauparaha that the people should be killed. Te Whatanui said he did not consent to kill those tribes but that they must be spared. Te Rauparaha was sad, that Te Whatanui had determined to spare those tribes. Ngatiraukawa then took possession of these lands. Those tribes then came back to Ngatiraukawa on the land and resided amongst them, but having no right (mana) to the land and continued to do so until the arrival of [the] Treaty of Waitangi.

The arrival of Ngati Raukawa gave Ngati Toa an important accession of strength, but at a price, in that while Ngati Toa was friendly to both Ngati Raukawa and Ngati Awa/Ngati Mutunga, relationships between the latter grouping and Ngati Raukawa were tense. Nor was everyone in Ngati Toa pleased with this allocation to Ngati Raukawa.¹¹⁵ The tension increased with further Ngati Awa migrations later in the decade (the Ngamotu migration). Now, however, Te Rauparaha had the resources and manpower to concentrate on Te Tau Ihu. Ward summarises the position of Ngati Raukawa as follows:¹¹⁶

¹¹³ See Carkeek, 23; Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 61.

¹¹⁴ Petition of Ngati Raukawa, 5 August 1880, MA 13/16 [Petitions of Ngati Raukawa], Archives New Zealand, Wellington.

¹¹⁵ Evidence of Tatana Whataupiko, 16 Otaki MB 346, cited Boast, *Ngati Toa in the Wellington Region*, 64; see also the discussion in Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 61.

¹¹⁶ Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 61-2.

In the meantime, however, Ngati Raukawa helped Ngati Toa contain the Whanganui tribes and to attack Kaiapohia in Te Wai Pounamu. Te Whatanui did not, however, join in Ngati Toa's relentless campaign against Muaupoko and Rangitane but agreed to peaceable sharings of the territory. Ngati Raukawa and Ngati Toa Land Court witnesses were later to state that Muaupoko were under Te Whatanui's protection and mana.

The table below summarises the various heke from a range of sources, probably an impossible task. There are a number of variant accounts.¹¹⁷ Tamihana Te Rauparaha, for example, says that the order was:¹¹⁸

Ngati Mutunga;
 Ngati Tama, led by Te Puoho;
 "All of the Ngati Awa";
 Ngati Raukawa, led by Te Ahu Karamu and Te Whatanui.

Name of heke	Date	Sources/Remarks
1. First heke of Nga Puhi and Ngati Toa	Circa 1819.	Biggs, "Two Letters", 268; Matene Te Whiwhi, (1868) 1 C Otaki MB 195-6; (1872) 1 Otaki MB 135; Tamihana Te Rauparaha, (1868) 1 C Otaki MB 372-3; Travers, 75-79; Wi Parata, (1890) 10 Otaki MB 144-5.
2. Main migration of Ngati Toa. Named Te Heke-mai-raro but often referred to in two stages, Te Heke Tauhutuhu Ahi (the Fire-lighting expedition) and Te Heke-Tataramoa. Ngati Toa are accompanied south by some of Ngati Tama, some of Ngati Mutunga and some of Ngati Awa.	1821-22	Well documented in MB sources: eg Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 392; Matene Te Whiwhi, Kukutauaki case (19872) 1 Otaki MB 392. Toa sources tend to emphasise that the majority of Ngati Awa returned home to Taranaki before Waiorua: see Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 197. See also H and J Mitchell, <i>Te Tau Ihu o Te Waka</i> , 107.
3. After Waiorua there is a migration of North Taranaki people: Ballara gives the name Nihoputa. A Toa source refers to a	1824	Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 141; (1868) 1 C Otaki MB 197; Wi Parata, (1890) 10 Otaki MB 158-9.

¹¹⁷ See Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 45-58.

¹¹⁸ Tamihana Te Rauparaha, *Life and Times of Te Rauparaha*, 39.

preliminary visit by Te Puoho of Ngati Tama and then a larger North Taranaki migration.		
4. Ballara states that after Nihoputa “another large party of people from the area between Waitara and Puketapu followed”.	1824-25	Ballara, ‘Te Whanganui a Tara’, 30, citing Shand as a source. No MB refs known to me.
5. Ngati Raukawa migrates south in three separate stages.	1829-30	Abundantly documented in Otaki MBs
6. Further migration by North Taranaki descent groups after the Waikato invasions and the battles at Pukerangiora and Ngamotu. These groups are therefore often referred to as Ngamotu and the heke as Tama Te Uaua.	1831	See Ballara, ‘Te Whanganui a Tara’; Anderson and Pickens, <i>Wellington</i> , 16.
7. Ballara refers to a final North Taranaki migration called Te Heke Paukena. This includes Te Awa, Ngati Ruanui and Taranaki groups.	1834?	
8. Battle of Haowhenua (Raukawa versus Ngati Awa)	1834	
9. Ngati Mutunga and some of Ngati Tama move to the Chatham Islands. Ngamotu establish themselves at Port Nicholson.	1835	

2.5 Ngati Toa expand to the South Island¹¹⁹

A key point to understand about Ngati Toa is that they were (and still are) a trans-Cook Strait iwi. As it happens Ngati Toa’s interests in the Northern South Island have received very full consideration in the Waitangi Tribunal’s Northern South Island (Te Tau Ihu Inquiry) for which the present author wrote a detailed report and presented evidence at the Te Tau Ihu inquiry in 2003. That inquiry was characterised by highly contested evidence between the various northern South Island groups. It is not considered necessary to traverse this material yet again for the purposes of this report, but it is important to make the point that Ngati Toa’s rohe covered substantial areas of both Islands. Thus for the sake of continuity of narrative

¹¹⁹ For a clear recent narrative on the Te Tau Ihu campaigns see Ballara, *Taua*, 355-392.

major developments in the South Island will be summarised here. As it happens there are a number of difficulties in establishing a precise sequence of events for the Northern South Island.

Following Ngati Toa manuscript the conquest of the northern South Island under the leadership of Te Rauparaha and Ngati Toa probably took place in six sequential steps:¹²⁰

- A preliminary reconnaissance shortly after the battle of Waiorua;
- A revenge attack on Wairau following the patu aruhe curse (probably in 1827);
- An attack on Ngai Tahu at Kaikoura following the barracouda's tooth insult in 1829/30 led by Te Rauparaha and made up of Ngati Toa, Ngati Awa, and Tuhourangi (on this expedition Te Pehi of Ngati Toa was killed by Ngai Tahu at Kaiapoi);
- A sea-borne attack on Ngai Tahu at Banks' Peninsula in 1830;
- Following the actions of a man named Tuhawaiki who made (or who was falsely accused of making) Te Pehi's bones into fish-hooks, a major attack on Te Hoiere, Rangitoto, Whakapuaka and places further to the west took place in 1830;
- A further campaign in the summer of 1831-2 which involved a three-pronged attack on Kaiapoi planned by Te Rauparaha, with three separate taua converging on Kaiapoi led by Te Rauparaha, Ropata Hurumutu of Ngati Toa, and Te Whetu of Ngati Koata;
- A further expedition by Ngati Rarua which took them to Poutini in the course of which they defeat Ngai Tahu of the West Coast led by Tuhuru (that is, the Kaiapoi campaign was in fact two-pronged, involving attacks down the East and West Coasts).

The chronology set out above is based on Ngati Toa sources, and I admit there are some difficulties with the order of events (in fact one feels that one might as well throw one's hands in the air and give up rather than attempt to consolidate all the various conflicting and often confusing accounts into a single narrative). The key problem appears to be the precise date of the major campaigns in the Marlborough Sounds, Nelson and Golden Bay. According to Peart, for example, there were two separate campaigns in the Sounds and the west. Peart says that the fall of Kaikoura occurred at more or less the same time as a campaign launched mainly against Ngati Kuia. Ihaka Tekateka of Ngati Koata also mentioned in the Native Land

¹²⁰ This narrative is based on the following sources: Biggs, "Two Letters from Ngaati-Toa to Sir George Grey", *Journal of the Polynesian Society*, vol 68, 1959, 262-76; George Graham (trans.), Wiremu Neera Te Kanae, *History of the Tribes Ngati Toarangatira, Ngati Awa-o-Runga-te Rangi and Ngati-Raukawa*, MS, Auckland Institute and Museum Library.

Court a wholly separate Ngati Koata campaign to the west which occurred before the main expedition which followed the incident of Te Pehi's bones being made into fish-hooks. So an alternative chronology might be:

- A preliminary reconnaissance shortly after the battle of Waiorua;
- A revenge attack on Wairau following the patu aruhe curse (probably in 1827);
- A two-pronged campaign in 1828 or 1829 which had the following elements:
- An attack on the Marlborough Sounds led by Te Rauparaha and Te Rangihaeata and comprising Ngati Toa, Ngati Rarua, Ngati Koata, Ngati Tama, Puketapu, Ngati Awa and Ngati Raukawa; and shortly afterwards followed by:
- An attack on Ngai Tahu at Kaikoura following the barracouda's tooth insult led by Te Rauparaha and made up of Ngati Toa, Ngati Awa, and Tuhourangi (on this expedition Te Pehi of Ngati Toa was killed by Ngai Tahu at Kaiapoi); and (possibly)
- A separate campaign by Ngati Koata to the west.
- A sea-borne attack on Ngai Tahu at Banks' Peninsula in 1830;
- Then, following the "fish hooks" affair, there is perhaps a *further* attack on the Marlborough Sounds and then (certainly) a major campaign to the west, mainly carried out by (says Peart) by Ngati Awa, Ngati Rarua, Ngati Tama and Ngati Koata and led by Te Puoho, Niho, Takerei, Te Manu Koherua, Te Keta, Te Poa Karoro and Te Whetu but in which (according to Toa sources) Ngati Toa were involved too (1830);
- The Kaiapoi campaign (1831-2); and
- The simultaneous expedition by Ngati Rarua to Poutini (Arahura) carried out at the same time as the attack on Kaiapoi.

The fixed points in the narrative are, firstly, the Akaroa affair (definitely in 1830) and the fact that the major attack on the northern South Island must have taken place *after* the death of Te Pehi Kupe at Kaiapoi at the hands of Ngai Tahu. As Ballara very truly says, however, "the results of these events were more important than their sequence".¹²¹ Probably the best-known of the South Island campaigns was the Kaiapoi Campaign of 1831-2. The conventional source for this campaign is the Rev. J W Stack's *The Sacking of Kaiapohia*.¹²²

¹²¹ Ballara, *Overview*, 105.

¹²² The copy I have is that published in the same volume and as a supplement to W T L Travers, *Stirring Times of Te Rauparaha*, based in turn on papers read to the Wellington Philosophical Society in 1872. It is not clear from this edition, at least, exactly when Stack's separate narrative was first written and published.

Stack presents a colourful narrative full of circumstantial detail, but few sources are given and how reliable the narrative might be is therefore very hard to know.¹²³ Stack says that the force which attacked Kaiapoi was a force of six hundred, “selected from Ngatitōa, Ngatiraukawa and Ngatiawa”.¹²⁴ The Te Kanae MS however gives a more complex picture. According to this source Ropata Hurumutu of Ngati Toa returned to Kapiti from New South Wales to learn that his uncle Te Pokaitura and some other relatives of his had been killed at Kaiapoi by Ngai Tahu. He therefore launched a private taua of his own, attacking Kaikoura on his way south. Te Rauparaha, hearing of this, led his own force south, and at the same time (obviously by arrangement) the Ngati Koata chief Te Whetu led his people south by means of an inland route taking with them their Ngati Kuia and Rangitane vassals. The three taua then converged on Kaiapoi. The fall of Kaiapoi is a well-known event which need not be traversed here.

The effect of the conquests is a controversial issue. It can be noted, however, that a historian of impeccable academic credentials – and who cannot be accused of pro Ngati Toa or anti-Ngai Tahu bias, Atholl Anderson, at the end of a very clear and objective discussion of events, has concluded that “Ngai Tahu were devastated by the Ngati Toa raids”.¹²⁵ Arguably his conclusions have implications which go somewhat beyond the issue of the impacts on Ngai Tahu specifically.¹²⁶

The northern half of the tribal territory had been lost, on both sides of the island, the paramount chiefs and others killed, and hundreds of people taken into captivity. The southern settlements had to cope with numerous refugees and nobody knew when Te Rauparaha would return. Had he done so immediately, he might well have taken the entire island.

Anderson is here describing the situation immediately after the invasions. He goes on to note Ngai Tahu recovery during the 1830s. Nevertheless the effect on Ngai Tahu was a “massive disaster”, compounded by their own civil war immediately before the invasions and the effects of epidemics. It was political developments in the North Island, meanwhile, which complicated matters for the Ngati Toa leadership.

2.6 Te Rauparaha’s vision

¹²³ Stack claims to have based his narrative on eye-witness accounts. At op.cit., p. 169 he notes that “[t]he facts narrated in the following pages were told the writer more than thirty years ago, by persons who had either taken place in the defence of the pa, or had once resided within its walls”.

¹²⁴ Stack, ‘Sacking of Kaiapohia, in Travers, *Stirring Times of Te Rauparaha*, 213..

¹²⁵ Anderson, *Welcome of Strangers*, 85.

¹²⁶ Ibid.

In my earlier report on *Ngati Toa in the Wellington Region*¹²⁷ I raised the question as to whether Te Rauparaha was attempting to create an entirely new kind of polity which, if left to itself, might have developed into a true Polynesian kingdom similar to the new kinds of states emerging elsewhere in the Pacific in Tahiti, Hawai'i and Tonga.¹²⁸ An important, and unresolved, question about Ngati Toa and Te Rauparaha is the political and economic nature of the polity established in the Cook Strait region under Te Rauparaha's leadership. How 'traditional' was Te Rauparaha – was he simply an especially successful old-style chief, or, alternatively, was he trying to establish something new? One of the most important themes in Pacific history in the nineteenth century is the emergence of Polynesian kingdoms in Tahiti, Tonga and Hawai'i – and, of course, in New Zealand with the establishment of the Kingitanga in 1858. Could Ngati Toa's domain have evolved into some kind of Polynesian kingdom or state similar to that established by the Kamehameha dynasty in Hawai'i or the Pomares in Tahiti? This may sound far-fetched, but no less a scholar than James Belich has seen the conflict in the Cook Strait region in the 1840s as a clash between two 'empires', that is to say the British and Ngati Toa empires. Belich writes that Te Rauparaha's "most remarkable achievement was that he held together Maoridom's first pan-tribal polity".¹²⁹ Belich writes of the "the loose Ngati Toa empire" and claims that "[i]n a sense, British power on the shores of Cook Strait was inherited from Ngati Toa through the conquest of the conqueror".¹³⁰

Professor Alan Ward, it has to be admitted, did not think so, but rather preferred an analogy to Napoleon:¹³¹

It can also be said at the outset that there simply is no evidence of crucial strategies employed by Tu (Pomare) of Tahiti or Kamehameha of Hawai'i such as the control of traditional deities, their symbols and sacred marae; or of the subsequent adroit switch to Christianity and the destruction of traditional gods and their rituals to deny rivals the chance to pursue the same tactics. Maori culture simply did not have the centralised lineages and religious symbols which would have made this possible. An analogy with Napoleon is closer, if we think about Napoleon as a very successful general and forget about the political legitimacy he sought from the French revolutionary government and assembly. If we remember too that Te Rauparaha's military successes, like Napoleon's, depended in part upon his own amazing courage and

¹²⁷ Boast, *Ngati Toa in the Wellington Region*, 18.

¹²⁸ On the formation of the Tongan kingdom see I C Campbell, *Tonga Ancient and Modern*, University Press, 1992, 26-53; Elizabeth Wood-Ellem, *Queen Sālote of Tonga*, 1999, University of Auckland Press, 17-21. The first Christian King of Tonga was Tāufa'āhau, who defeated Laufilitonga (the last Tui'i Tonga) in 1826 and who reunited the ancient Tongan kingdom after a long period of disunity. Tāufa'āhau was baptised by the Wesleyan missionaries in 1831 became King in 1845, and was known to Europeans as George (Saioi) Tupou. Whether the circumstances Tongan history in the 1830s-1850s are at all comparable with the situation of the Cook Strait region of Aotearoa are a matter that requires more consideration than is possible here.

¹²⁹ James Belich, *Making Peoples*, 205.

¹³⁰ *Ibid*, 206.

¹³¹ Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 30.

tactical brilliance, in part holding together – for a time – a motley collection of tribal allies, much as Napoleon held Austrians, Prussians, Italians and others in his alliance, each constantly inclined to go their own way and doing so after Napoleon’s disastrous failure in Russia.

Ward argues that while invasion and settlement of the territory of others was not new in the Maori world, what was new was the sheer scale of Te Rauparaha’s ambitions:¹³²

Leaving aside Mr Boast’s speculation, Te Rauparaha’s plans were indeed hugely ambitious and daring. As Parsonson says, they involved pushing aside the southern peoples, establishing Ngati Toa and their allies in their territories, and controlling the resources of those territories, including trade with the Pakeha. The invasion and occupation of others’ territory was not original; indeed the Maori history of New Zealand consists of just that, once there was little or no unoccupied land to take up. But the *scale* of it was new.

Even those scholars who have seen Te Rauparaha more as a dyed-in-the-wool Maori traditionalist rather than as an innovative politician do not deny the scale and significance of the Ngati Toa invasion.¹³³ For example, Angela Ballara, whose principal emphasis is on the highly traditional nature of politics and warfare in the Maori world in the 1820s and 1830s, nevertheless also notes the scale of the impact of Te Rauparaha on the peoples of Kapiti and Te Waipounamu. She also pays the following tribute to Te Rauparaha’s qualities as a great leader and tactician:¹³⁴

There can be no doubt that the impact of Te Rauparaha on the population of the Kapiti coast, and on that of the northern South Island...was enormous. Yet he has been maligned. A brilliant tactician and courageous fighter, especially in adversity, a wise leader of the various peoples who looked to him for leadership, he sought to realise every opportunity that presented itself for them. In doing so, he was no more treacherous or blood-thirsty than anyone else operating at the same time within the contemporary set of values. He was feared because he was consistently more successful. He was consistently successful because he thought and planned before acting or reacting.

2.7 Political events in the Kapiti Coast region in the 1830s

The next key step in the history of the Cook Strait region was the sudden arrival of a substantial group of Taranaki refugees, who abandoned their North Taranaki homes after the fall of Pukerangiora to Waikato and the battle of Ngamotu. This grouping, referred to as

¹³² Ward, *ibid*, 29-30.

¹³³ Burns, *Te Rauparaha*, 296-299; Howe, *As the Waves Fall*, 220.

¹³⁴ Ballara, *Taua*, 354.

“Ngamotu” after the battle, were Ngati Ruanui, Taranaki and Ngati Awa and were led by their chiefs Te Puni and Te Wharepouri. This seems to have been a large migration and their arrival led to an immediate collision with Ngati Raukawa.¹³⁵

These tensions eventually resulted in a large-scale battle at Haowhenua, conventionally dated to 1834.¹³⁶ This was a major engagement and is the subject of detailed description in the Otaki Minute Books.¹³⁷ The fighting had the disturbing feature of contributing to escalating conflict, as each side called for aid from allies from far afield, while Ngati Toa themselves were divided. Te Rauparaha naturally took the part of Ngati Raukawa, but other sections of Ngati Toa favoured Ngati Awa: there may have been some within Ngati Toa who were still of the view that Te Rauparaha had been over-generous to his Ngati Raukawa kin. The battle seems to have been a draw, on the whole.¹³⁸ The tension between the Taranaki groups, or some of them, and Ngati Raukawa remained. As the Waitangi Tribunal has put it, “the battle of Haowhenua was followed by a general withdrawal from the vicinity of each other’s rohe”.¹³⁹ This had consequences both in the Kapiti region and in Te Tau Ihu. Ngati Raukawa “went north of the Manawatu into Ngati Apa’s territory, while large numbers of Te Atiawa moved across the Strait, settling at Totaranui where they augmented those who had established themselves after the initial taua and Te Rauparaha’s roheroetanga”.¹⁴⁰

Ballara argues that Ngati Toa who had kainga at Te Awaiti and Arapaoa, withdrew from the area, as Te Atiawa numbers expanded. It is her conclusion that Ngati Toa’s ‘history of occupation was made more complex’ after Haowhenua. The tribe had split kin allegiances: Te Hiko and his branch within Ngati Toa had fought alongside Te Atiawa, while Te Rauparaha had sided with his Ngati Raukawa kin.

One further population displacement needs to be noted. In 1835 Ngati Mutunga, who had assisted in the invasions of Te Tau Ihu, but who had been living around Wellington harbour for about a decade, suddenly abandoned it and moved en masse to the Chatham Islands (Rekohu/Wharekauri), accompanied there by other groups: the Kekerewai, many of

¹³⁵ The immediate cause of conflict seems to have been when a Ngati Raukawa chief named Te Whakaheke found a Ngati Awa man named Tawake in his potato pit and killed him: “this”, says Matene Te Whiwhi, “caused a war”.

¹³⁶ Anderson and Pickens, *Wellington District*, Rangahaua Whanui District 12, 1996, 15.

¹³⁷ Nopera Te Ngiha, Himatangi case, (1868) 1 Otaki MB 395; evidence of Tamihana Te Hoia, (1891) 16 Otaki MB 346.

¹³⁸ Anderson and Pickens state that “the result was inconclusive, but...the greater honours probably lay with Te Ati Awa”: Anderson and Pickens, *Wellington District*, Rangahaua Whanui District 12, 1996, 16. Ian Wards describes Haowhenua as a “draw”, after which “the visiting tribes left, and the Raukawa and Ngatiawa settled down to a form of resentful neutrality”.

¹³⁹ Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island*, Wai 785, 2007, p 41, relying on Ballara, ‘Customary Maori Land Tenure in Te Tau Ihu’, pp 117-119.

¹⁴⁰ Ibid.

Ngati Tama, and Ngati Haumia.¹⁴¹ The invasion of the Chathams is also richly documented in the Land Court minute books.¹⁴²

The Ngamotu group led by Te Wharepouri and Te Puni moved in turn to Port Nicholson,¹⁴³ which is where they encountered the New Zealand Company officials on the *Tory* in 1839. The main area of Ngati Awa settlement was, however, not at Port Nicholson but at Waikanae. Ngati Raukawa and Ngati Awa fought another bloody battle at Kuititanga in 1839¹⁴⁴ at the time of the arrival of the *Tory*, which turned up at Kapiti on the day of the battle. Dieffenbach saw the Ngati Awa wounded and helped to tend them, and afterwards visited the scene of the battle, where the signs of the fighting were all too clear: “trenches were dug in the sand of the beach, the fences of the village had been thrown down, and the houses were devastated”.¹⁴⁵ The *Tory*, in other words, had sailed straight into a major conflict, a dimension of its visit which is sometimes overlooked. Although it has been argued that by this time Ngati Awa rangatira at Waikanae and elsewhere had effectively challenged Ngati Toa’s authority, Professor Ward has noted that Te Rauparaha certainly did not accept this:¹⁴⁶

In point of fact, although Ngati Awa were certainly challenging Te Rauparaha’s authority he was resisting the challenges. Indeed Colonel Wakefield’s diary records evidence of Te Rauparaha crossing the strait in early 1839 and asserting rights to Motuara and Long Island in a clash with Te Atiawa which left eight dead. Ngati Hinetuhi were observed by Wakefield bringing tribute to Te Rauparaha.

And Walter Buller was later to write that Ngati Toa in alliance with Ngati Raukawa were the clear victors in the fighting that took place in 1839.

Conflict with Ngai Tahu continued. Stack¹⁴⁷ refers to an expedition known as Oraumoa-iti at which Te Rauparaha was nearly captured by Ngai Tahu. This was followed by a second Ngai Tahu counter-attack which led to an engagement with Ngati Toa in Queen

¹⁴¹ On this see Waitangi Tribunal, *Te Whanganui a Tara*, 27.

¹⁴² See eg evidence of Toenga, Keckerione or Mangatu Karewa case, (1870) 1 Chatham Islands MB 6; evidence of Rakatau, *ibid*, 7.

¹⁴³ See evidence of Mawene Hohua, (1868) 1 C Wellington MB 63; Hemi Parae, (1868) 1 C Wellington MB 75-6; Hori Ngapaka, (1868) 1 C Wellington MB 12; Mohi Ngaponga, (1868) 1 C Wellington MB 7; Evidence of Wi Tako, in *Wi Tako v Manihera Te Tou* [Supreme Court reference to NLC], (1868) 1 C Wellington MB 63.

¹⁴⁴ Wi Parata gives a detailed account of this battle in his evidence in the Ngarara rehearing case: (1890) 10 Otaki MB 162-3, 164-6. For an analysis of the evidence see especially Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 104-8.

¹⁴⁵ Ernst Dieffenbach, *Travels in New Zealand*, 1, 104.

¹⁴⁶ Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 107. Ward here relies on William Wakefield’s Diary 1839-40, 1842, Transcript, qMS-2102, ATL. Ward goes on to note (in my view, insightfully) (*ibid*):

The threat to Te Rauparaha’s authority from strong Te Atiawa chiefs steemed, as we have seen, from the almost impossible task of managing two sets of allies, themselves traditionally at enmity, in the form of Ngati Raukawa and Ngati Awa.

¹⁴⁷ This paragraph follows the discussion in Stack, *Kaiapohia*, pp 90-91.

Charlotte Sound. The accounts given in Stack, however, give no indication of a comprehensive Ngai Tahu reconquest of the South Island Coast. It was, rather, diplomacy which normalised relations. Peacemaking with Ngai Tahu was dictated by the political struggle between Ngati Raukawa and Ngati Awa. According to Stack:¹⁴⁸

Rauparaha's tribe quarrelled with their neighbours and allies, the Ngatiawa and fearing a coalition being formed against him, the wily chief of Ngatitua resolved to make peace with Ngaitahu; and selecting the Chiefs of highest rank from amongst his Kaiapohia prisoners, he sent them home under the charge of an honourable escort, desiring them to use their influence with their friends to accept his friendly overtures.

Stack does not give a source for this, but it seems very plausible that with the conflicts on the Kapiti coast Te Rauparaha would seek to work out an arrangement with Ngai Tahu. Following the return of the captives the people of Kaiapoi agreed to make peace. However, "though peace was established the bulk of the Kaiapohian prisoners carried to the north were still kept in bondage".¹⁴⁹ They were released in 1839 as a result of the influence of Christian teaching.

When William Wakefield reached Queen Charlotte Sound in 1839 he found Ngati Toa hegemony to have been convincingly re-established.¹⁵⁰

These men are of the Ngatimatui tribe, whose chief lives here, and is tributary to Raupero, the head of the Capiti Tribes, who lives at Capiti on Entry Island. This part of the Sound, however, is owned by Hiko, Raupero's nephew, who inherited it from Tepahi, and who will probably succeed Raupero as chief of the Capiti Tribes. One of them recognized Nayti, the interpreter, as an old acquaintance, and the latter was exceedingly alarmed at their appearance on board; - the aspect of affairs here having greatly changed since he was here three years ago and not indicating a very peaceable state. At that time, no pah or fort existed in the Sound; - but as we sailed into it, the Island of Motuara and Long Island each presented signs of hasty but extensive fortification, if a rough enclosure by palings scarcely so strong as an English sheep pen can be so called; - and we found that a few months ago a quarrel had taken place between the Capiti Tribe and that called Ngatiawa, which resides further up the sound than where we are, respecting the right of proprietorship in Motuara and Long Island, when Raupero crossed the strait with his followers, and after a fight which ended in the slaughter of eight men, had been victorious, when peace was established: - and it still exists.

¹⁴⁸ Ibid, 91.

¹⁴⁹ Ibid.

¹⁵⁰ Wakefield, Despatch of 17 August 1839, NZC 3/1, National Archives, Wellington.

Certainly Wakefield found Te Rauparaha's power and pre-eminence in the Cook Strait region very much a reality. In Wakefield's words:¹⁵¹

The history of Raupero is the most eventful and worthy of Record of any existing New Zealand Chief. His expulsion and that of his numerous and powerful tribe from their Native District Kafia, by the Waikato and Bay of Islands hosts is well known to you from the mention it has received in numerous works on this country. Their forcible seizure and occupation, in their turn, of all the Coast land on both sides of this Strait, has also been described, but the means he has employed for the aggrandizement of his people and the causes of his pre-eminence amongst all classes and clans, extending also to the foreign residents and visitors, has not been dwelt on.

In 1844 a Select Committee of the House of Commons held an inquiry into New Zealand. One of those who gave evidence was a Captain J H Wilson, an immigrant to Nelson and formerly in the service of the East India Company. Wilson saw Te Rauparaha and Te Rangihaeata as being "understood generally" to be "masters of both sides of Cook's Straits".¹⁵² He was questioned closely about the nature of Te Rauparaha's authority in the Cook Strait region in the early 1840s:¹⁵³

Q: You say they [Te Rauparaha and Te Rangihaeata] were generally believed to be in possession; you must apply that word "generally" to other people?

A: The natives always spoke of them as those whom they feared and respected.

Q: Feared?

A: Evidently.

Q: But did they consider them as in their sense their chiefs?

A: Perhaps not their immediate chiefs; they might or might not.

Q: Did they not fear them as marauders?

A: Not in that sense, but as their superiors, rather. They seemed to consider them as those who might exercise authority over them.

Q: Do you suppose that fear to be a the fear of a rightful exercise of authority, or the fear of an unjust aggression?

A: It is difficult to attach just ideas to the exercise of rightful authority among people such as these. They thought that if what they did was not pleasing to Rauperoo and Rangiaiaata they might visit them with displeasure.

Q: That they might make an inroad upon them?

¹⁵¹ Wakefield, Despatch of October 13th 1839, (Duplicate of No 3/1839), NZC 3/1, Archives New Zealand.

¹⁵² *Report of the Select Committee on New Zealand, 1844*, (in *British Parliamentary Papers*, IUP (NZ) vol 2, Minutes of Evidence pp 216-17.

¹⁵³ *Ibid.*

- A: They evidently felt that Raupero was their superior.
- Q: That he was the stronger?
- A: Undoubtedly stronger; but still there was more of the feeling which people in their condition would look up to a chief, to the man supposed to be what we should call the lord of the territory.
- Q: Do you think they had that idea?
- A: I do; but you attach such distinct meanings to my expressions that it is difficult to answer; the people are so totally unlike any thing that you have in a civilized country, that you cannot apply the same terms.
- Q: So that using the words “lord of the territory” is likely to mislead us?
- A: It would be necessary that I should understand what you mean as constituting a lord of territory.
- Q: You said they were considered lords of that territory: the object of the question is to ascertain the sense in which you use that phrase?
- A: The sense in which it might be applied to any chief of a barbarous country, who had himself become possessed of that country; and, if you asked whether any portion of that district considered him as their lord, I should say yes.
- Q: [Mr Hope.] They were anxious to please, and fearful to offend him?
- A: Yes; and that might arise from their looking up to him as their rightful chief.
- Q: [Mr Cardwell.] From you had heard of Raupero and Rangiaiaata, if you had to purchase land in the district, to whom should you have applied for it?
- A: From the general impression I had, I should have applied to Raupero.
- Q: Before the Wairau affair, should you have thought it necessary to have had Raupero’s sanction?
- A: Yes; Rangiaiaata is scarcely a distinct chief, but more Raupero’s fighting man.

From this it seems that claims that Ngai Tahu had pushed back Ngati Toa, or that Ngati Toa’s influence was waning in the Cook Strait region by the late 1830s are exaggerated,

2.8 Analysing Ngati Toa’s “rohe”.

There really can be no doubt that upon the arrival of the *Tory* in 1839 Te Rauparaha and Ngati Toa maintained an exceptionally powerful polity in the Cook Strait region. Wakefield himself recognised this and said as much in his reports.

The following points can be made. First, Ngati Toa had a number of “core” areas (in the sense that they were Ngati Toa’s own lands used for cultivation, housing, resource gathering, and so forth). These core areas were in *both* the North and South Islands.

- a. North Island: There were certainly some core areas of particular importance to Ngati Toa. Some of these were in the North Island, others in the South. Obviously this core must include Kapiti and Mana Islands and the coast from Ohariu to Paekakariki. It is reasonable to conclude that the whole of the Porirua block must be seen as part of this core, as the government at no stage was under the impression that anyone else's agreement to the deed was required (nor as far as I know was this asserted) and - on the same basis - also of the entirety of the Wainui block and a shared interest in the Waikanae block. This, to repeat is the "core": beyond that lay a much larger zone of authority.
- b. South Island: Commissioner Spain believed that some parts of the South Island were undoubtedly "in the real and bona fide possession of the Ngati Toa tribe". These were the Cloudy Bay area "comprising the Wairau" and "a part of Queen Charlotte's Sound". In "each and all of these places the tribe has both residences and cultivated lands".¹⁵⁴ There is also abundant evidence of Ngati Toa in the Upper Pelorus Sound.¹⁵⁵ George Clarke, however, thought of as the core Ngati Toa areas in Te Tau Ihu as "the vicinity of Nelson, Queen Charlotte's Sound, Cloudy Bay".¹⁵⁶ Although there have been suggestions made that Ngati Toa's authority was confined to the coastal margins and that Rangitane and other groups maintained their independence inland, this is highly implausible (it is the coast which really matters) and the Waitangi Tribunal was not convinced.¹⁵⁷

¹⁵⁴ Spain's report to Fitzroy on the New Zealand Company's Nelson claims, Mackay, vol 1, 54-60, at 59.

¹⁵⁵ Evidence of Paka Herewine Ngapiko, Nelson Tenth's case, (1892) 2 Nelson MB 174: "Ngati Toa got the Wairau and the Pelorus district but I cannot describe the boundaries".

¹⁵⁶ Official report of George Clarke jr., 16 August 1843, *Appendix to the 1844 House of Commons Select Committee Report on New Zealand*, BPP(NZ), Irish University Press edition, vol 2, 337.

¹⁵⁷ Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Customary Rights in the Northern South Island*, Wai 785, 2007, p 56:

Ngati Toa were the main conquerors of the Wairau, Karauripe (Cloudy Bay), and Kaituna to Te Hoiere area. Although their occupation, which they took up in circa 1828-30, concentrated more fully around Karauripe, that arrangement reflected their interest in the whaling stations, not their lack of control and exercise of rights further inland. Residence was on the coast, but inland areas were visited for birds, pigs, and other resources. Wairau was under the authority of Te Rauparaha's elder brother, Mahurenga, while his half-brother, Nohorua, and his nephews, Te Kanae, Rawiri Puaha, and Hohepa Tamaihengia, were living at Cloudy Bay and periodically visited other Ngati Toa settlements at Te Hoiere, where they were regarded as the chiefs.

Ngati Toa occupation included regular visits by Te Rauparaha and others of the tribe who more usually resided at Kapiti and Porirua. Te Rauparaha had a domicile at Otairua (Robin Hood's Bay) and, in the 1830s, spent long periods there each whaling season. He did

As well as this, there was definitely a much larger zone of Ngati Toa authority and rangatiratanga, which derived from their special position as conquerors and leaders of the coalition, and from the equally special position of the Ngati Toa chiefs, especially Te Rauparaha and Te Rangihaeata. Because of the existing Northern South Island regional inquiry this issue has already been considered reasonably fully for Te Tau Ihu. There, it is clear enough that the Ngati Toa leadership appears to have considered that beyond the core zones they had a kind of joint authority shared with the resident tribes of the coalition. This is most clearly seen in the case of the two letters sent by the Ngati Toa leadership to Grey in 1851 and 1852.¹⁵⁸ It is clear from the first of these letters that Ngati Toa had become concerned about Ngati Rarua's claim to a vast region from Whakatu and Waimea and extending down the West Coast of the South Island to Arahura.¹⁵⁹

Oh friend, Governor, know you that the reason for this letter being written to you is our great concern at being encircled by Ngaati-Rarua at Whakatuu, at Wai-mea and all the places on that coast right down to Ara-hura. But we ourselves should have the authority over Ara-hura; if their [Ngati Rarua's] interests *are included with ours, then it will be alright* [emphasis added]. On the other hand you must carefully consider the claims of those from the other side. If you are making a decision about Whakatuu and Waimea, then think of us.

What exactly does this mean? It seems that Ngati Toa could live with a shared interest with Ngati Rarua on the West Coast. It is admittedly not very clear, but possibly the letter indicates that a distinction is being drawn between the West Coast and Whakatuu and Waimea ("think of us", in the case of the latter.)

The immediate context of both letters was the Pakawau transaction (15 May 1852) by which Ngati Rarua sold the Pakawau-Cape Farewell area to the Crown. The letters of 11

not himself cultivate at Wairau, except briefly in 1843, but it is clear that he regularly visited the area. Dr Phillipson notes that Te Rauparaha's visits were shorter in duration after the decline of whaling in the late 1830s, but this did not mean an abandonment of his rights.

The Tribunal also considered how far south this zone of authority extended, and was generally non-committal. Certain there is nothing to show that Ngai Tahu had regained full control of the entirety of their 'takiwa' by 1840 (see *ibid*, 57-8):

The extent to which Ngati Toa's control extended southwards down the east coast was also unclear and actively disputed at 1840. Neither Ngati Toa nor Ngai Tahu were in effective occupation of the Kaikoura coast. Ngai Tahu had certainly regained the initiative on the military front by this stage. They had carried out successful raids on Wairau and Totaranui in 1832, and the northern tribes had been unable to avenge Te Puoho's death; but Ngai Tahu had not regained control to the extent that they were able to resettle the area and would not resume occupation of their old sites at the mouth of the Kaikoura River until the late 1850s. This state of affairs – the stand-off between the two iwi and the need to find accommodation between them – was eased by the intermarriages that took place. We draw no conclusions here about who held territorial control, as this is not a matter for our preliminary report.

¹⁵⁸ See Biggs, "Two letters from Ngaati-Toa to Sir George Grey", *Journal of the Polynesian Society*, vol 68, 1959, 262-76.

¹⁵⁹ *Ibid* (letter of 11 December 1851).

December 1851 and 29 September 1852 were both signed by Rawiri Puaha, who was Ngati Toa's leading chief at this time. On 13 May 1852 the Rev. Samuel Ironside drew Richmond's attention to Rawiri's concerns about this transaction, concerns which are very similar to what is written in the letters. As a matter of "chieftainship" Rawiri wanted to have all the money for Pakawau paid over to him which he could then disburse to Ngati Rarua.¹⁶⁰

In a report to Governor Browne of 7 April 1856 McLean wrote that "the Ngati Toa tribe of Porirua...had unquestionably as the earliest invaders a prior right to the disposal of the district".¹⁶¹ This "they had never relinquished", although "after the Conquest their leading Chiefs partitioned out to the subordinate branches of their own tribe as well as to the Ngati Awa". McLean believed that even groups claiming a power of sale over the lands they actually occupied and cultivated "when closely examined" nevertheless "always acknowledged that the *general rights of alienation* (emph. added) vested in the Ngati Toa Chiefs of the Northern Island". How should this be interpreted, however? Some might say that McLean did not know what he was talking about, which is in my view unlikely. Another option is that McLean was engaged in some kind of deliberate strategy of maximising Toa interests in order to simplify the task of Crown purchasing, a line of analysis which has attracted some support but which is also open to criticism. Another option was that McLean, simply, did know what he was talking about - and was right, moreover.

Ngati Toa's position in the Cook Strait region has also been commented on at some length by the Waitangi Tribunal.¹⁶² According to the Tribunal:

Ngati Toa had relatively secure ahi ka in the Porirua district by 1840. However, the arrival of the New Zealand Company at Port Nicholson further diminished Ngati Toa's influence at Te Whanganui a Tara. Previously, Ngati Toa had monopolised trade with the Pakeha, and controlled the access of incoming tribes to European goods. Te Whanganui a Tara had been a trade backwater, but the New Zealand Company's decision to establish a settlement there threatened Ngati Toa's dominance of trade while at the same time giving Te Atiawa the enhanced security and independence that that easy access to European weapons and the presence of Europeans provided. In Maori terms, this enhanced the mana of Te Atiawa at Te Whanganui a Tara. It also undermined Ngati Toa's mana as the dominant economic and military power in the region, and suddenly put their areas of residence outside the new sphere of importance.

Nevertheless, Ngati Toa continued to exercise mana within the Port Nicholson block, in part by means of their influence over Ngati Rangatahi in Heretaunga. Ngati Rangatahi,

¹⁶⁰ Ironside (to Richmond?), 13 May 1852, SSD 1/5/108.

¹⁶¹ McLean to Gore Browne, 7 April 1856, CO 209/135, Document Bank 1557-85, at 1562.

¹⁶² Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 31-2.

seemingly acting on the orders of Ngati Toa, had been using Heretaunga as a resource base prior to 1839, and had begun developing ahi ka rights there. They were probably further up the valley than Te Atiawa interests extended. Ngati Rangatahi came south with Ngati Toa in the Tataramoā heke, and probably moved into Heretaunga some time in the early 1830s. They were granted rights there by Te Rauparaha and Te Rangihaeata in return for helping to clear the area of the Whatonga-descent peoples.

This analysis will require some further consideration by Ngati Toa themselves as will the Tribunal's findings relating to the arguments advanced by Ngati Toa during the Wellington inquiry as to the nature of Ngati Toa's authority in the broader Wellington region.¹⁶³ It is probably the case that the establishment of the Port Nicholson settlement did indeed have significant effects on Ngati Toa's "power and authority" – although whether this was true of Ngati Toa's *mana* seems less clear – but in any case this was not an immediate transition. It took some time before the changed political economy of the Cook Strait region was to become apparent.

¹⁶³ See Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, at pp 39-40. The Tribunal stated that "[t]he crux of Ngati Toa's claim is that the Crown failed to recognise all rights which were not based on physical occupation". The Tribunal does not appear to have made specific findings on this argument. It did, however, while pointing out that "Ngati Toa's residence lay outside the Port Nicholson block" (ibid, 41) accept "that at 1840 Ngati Toa had aki ka in the Porirua basin, parts of Ohariu (other parts of which were used or occupied by Ngati Tama), and parts of Heretaunga".

3 Interaction with Pakeha, 1830-40

3.1 Introduction

This part of the report deals briefly with economic and social changes in the Cook Strait region in the 1830s. Information on this is sporadic and scattered, and no doubt some further research would reveal a more comprehensive picture. One source not fully utilised is the logs of whaling ships who visited Cloudy Bay and Kapiti during the 1830s. Many of these ships came from New England whaling ports, Salem and New Bedford, where the logs are still held in local archives and museums. Other ships were English, French, Danish and so on. Also Maori-language sources might give some more details on the nature of Ngati Toa's system of trading and receiving of tribute in the 1830s.

This was certainly a period of rapid social change, with the expansion of commerce and the establishment of the CMS mission at Otaki (Reverend Octavius Hadfield) and the Wesleyan Mission at Port Underwood (Reverend Samuel Ironside). In terms of social history it was also a time of widespread epidemics and mortality for all of the tribes. Ngati Toa and Ngai Tahu, antagonists in the vast Wairau to Kaiapoi area, were not spared.

3.2 “He receives tribute from numerous petty tribes”: Tribute and economic organisation

There is not much information on the extent to which Te Rauparaha's polity functioned as an economic unit. The period between Waiorua and Haowhenua was described by Nopera Te Ngiha as a time of prosperity. Ngati Toa, Ngati Awa, Ngati Raukawa lived “like bees” at Otaki and Waikanae and Porirua. All “lived peaceably”.¹⁶⁴ After they had been allocated land at Otaki by Te Rauparaha, Ngati Raukawa dug potatoes, made clearings, scraped flax and harvested eels in the lakes. “We gave the eels to Ngati Toa, the owners of the land”.¹⁶⁵ This looks like some kind of tributary system, but the details are sketchy. According to the Te Kanae MS the people of Poutini, following their subjection by Ngati Rarua, “were kept as slaves to grow food for Ngati Toa”. William Wakefield was aware that Te Rauparaha received tribute from other groups:¹⁶⁶

¹⁶⁴ Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 394.

¹⁶⁵ Parakaia Te Pouepa, Maungatautari case, (1868) 2 Waikato MB 48-53.

¹⁶⁶ Wakefield, Journal, ATL qms2102, entry for 14 October 1839.

He receives tribute from numerous petty tribes and slaves and the stronger tribes are occasionally constrained to purchase peace at his hands.

There is some evidence that as a consequence of the conquests by the coalition many of the Ngati Kuia, Ngati Apa and Rangitane people were enslaved. According to Dieffenbach the Rangitane, who according to him were mostly living in Pelorus Sound with Ngati Toa, were “slaves of the Nga-te-toa, and are the remnant of the former possessors of a great part of Cook’s Straits”¹⁶⁷. . Wirihana Maihi of Rangitane, Ngati Kuia and Apa, who gave evidence in the Tai Tapu case in 1881, said that at the time of the conquest he was taken as a slave to Wairau and never returned. “Some of our people lived as slaves at Whanganui and Motueka”.¹⁶⁸ Slavery was a harsh reality of the time. Slavery was not abolished in the British Empire until 1833 (it is said in the Tribunal’s Rekohu Report that “slavery had been outlawed by an Imperial Act of 1807, but this incorrect¹⁶⁹) or in the United States until Lincoln’s Emancipation Proclamation of 1863. There never was a formal emancipation process in New Zealand. On the whole the institution seems to have simply disintegrated, largely as a consequence of Christian teaching. New Zealand missionaries belonged on the whole to the Evangelical wing of the Anglican church which had played an important role in the great anti-slavery campaigns in England.

Kapiti, controlled by Ngati Toa directly, was at the centre of a complex network of commerce and trade. Dieffenbach believed that the real reason for Ngati Raukawa’s jealousy of Ngati Awa was that the latter were much closer to Kapiti and the commercial opportunities that it provided:

“Several years ago the Nga-te-raukaua came from the interior, and formed a settlement on the sea-shore. The whole coast from Taranaki to Port Nicholson is a weather-beaten lee shore, and the only place where large ships can with safety anchor is the road-stead of Kapiti. Not satisfied with a settlement which they formed at Otaki, they wanted to come nearer this place of anchorage, for the advantage of trading.”¹⁷⁰

3.3 European commerce

One of Te Rauparaha’s main objectives in coming to Kapiti, as has been emphasised above, was the hoped-for benefits of trade with the Pākehā. In this strategy he was markedly

¹⁶⁷ Dieffenbach, *Travels in New Zealand*.

¹⁶⁸ (1883) 1 Nelson MB, 7.

¹⁶⁹ Rekohu Report, 2001, 63. What was abolished in 1807 was the slave *trade*. But this did not abolish the status of slavery in the British West Indies: it meant that the slave population thereafter came from children born into slavery. In the West Indies and in the American South the law was that all children born of a slave mother were the property of the owner of the mother.

¹⁷⁰ Dieffenbach, *Travels in New Zealand*

successful. Commerce first began to develop in the years after Waiorua. The earliest permanent Pākehā resident was James ‘Worser’ Heberley, who was established at Kapiti as early as 1826.¹⁷¹ There was also a convict named Joe Rowe, known to Ngati Toa as Te Oroa. By 1828 “Kapiti was established as a port of call”¹⁷²; by 1830 there were 30 or so Pākehā residents at Kapiti.

In the 1830s whaling became an important industry in the Cook Strait region. The region was a centre of shore whaling, ‘bay’ whaling (i.e. where whales were caught from ships moored close to the coast), and as a base for deep-sea whaling ships. The ex-sealer John Guard established a shore whaling station at Te Awaiti in Tory Channel 1827. From 1831-1837 Cloudy Bay “attracted American, Australian, British, Canadian, Danish, French, and German ships, which anchored and whaled in the bay along with local shore stations”.¹⁷³ Cloudy Bay was both a shore whaling base and a port and base for deepsea whaleships.¹⁷⁴ Many logs and journals from whaleships all around the world describe time spent bay whaling in Cloudy Bay, a source which might repay some further analysis in order to learn more about Maori trade and commerce at this time.¹⁷⁵ William Wakefield, who saw Cloudy Bay and Te Awaiti in 1839 was, however, censorious: “[t]he beaches in Cloudy Bay and Teawaiti present the most miserable scenes of idleness, drunkenness and recklessness amongst our Countrymen”.¹⁷⁶ In the 1830s a flax trade based on Kapiti, controlled by Ngati Toa, had also become important.¹⁷⁷ Less reputable traffic, such as trade in preserved human heads (in exchange for gunpowder, in one known instance¹⁷⁸), also apparently took place on Kapiti.

There were shore whaling stations at Mana, and three at Porirua, including one at Te Korohiwa and one on the north side of the Porirua harbour Paremata (close to where the road

¹⁷¹ See Ballara, *Taua*, 338.

¹⁷² Ballara, *Taua*, 338.

¹⁷³ Harry Morton, *The Whale’s Wake*, University of Otago Press, Dunedin, 17. This book is the leading scholarly history of whaling in early colonial New Zealand. See also Kelvin Day, *Shore Whaling*, Porirua Museum History Series, No 1, Porirua Museum, Porirua, 1986; D P Miller, “Whalers, flax traders and Maoris of the Cook Strait”, *Dominion Museum Records of Ethnology*, 1971, vol 2, 57-74; Nigel Prickett, “An archaeological reconnaissance of the shore whaling industry, Kapiti Island, New Zealand”, 1982, vol 20, 41-63.

¹⁷⁴ Morton, *Whale’s Wake*, 138.

¹⁷⁵ See Morton, *Whale’s Wake* 230:

Cloudy Bay saw big American ships in plenty and a few British ships, such as *Cheviot*; by the late 1830s the French were there too. Journals and logs survive from many other ships which whaled at Cloudy Bay. There was *James Stewart* of New Brunswick, *Virginia* of Germany, and *Concordia* of Denmark, to say nothing of *China*, *Nile*, *Jasper*, *Favorite*, *Friendship* and *Addison* of New England.

¹⁷⁶ Wakefield, Journal, ATL qms2102, entry for 15 October 1839.

¹⁷⁷ Morton, op.cit., 127.

¹⁷⁸ See Morton, op.cit., 135, citing J P Johnston, *Plain Truths Told by a Traveller*, London, 1840, 62.

and rail harbour bridges are today).¹⁷⁹ The Paremata station was owned by Joseph Thoms, whose main base was a Te Awaiti in Queen Charlotte Sound. Whales were sometimes even taken in Wellington harbour.¹⁸⁰ Captain Thomas Evans had a famously well-run and successful station at Tokomapuna, an island near Kapiti.¹⁸¹ Some of the shore stations were run by Americans from New England. In the early 1840s an American whaler, Captain Lewis, established a whaling station at Lewis Island, near Kapiti.¹⁸² There were no less than 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”.¹⁸³ The largest of the Kapiti stations was Jillet’s station at Waiorua Bay, and un 1846 between 50-60 Europeans lived there.¹⁸⁴ Some prominent whalers, such as Joesph Thoms¹⁸⁵, John (‘Scotch Jock’) Nichol, and Tommy Evans all married into Ngati Toa. From all this commerce Ngati Toa were able to acquire commodities they wanted, guns and powder especially. Arming an iwi required a significant investment in the production of food (pork, fish, potatoes) or commodities (flax) in exchange, although it seems that during the 1830s the price of a musket steadily fell.¹⁸⁶

The whaling industry at Kapiti and Cloudy Bay impacted on the Maori economy in a number of ways. Maori traded with the ships, worked on them as harpooners and sailors, and also became directly involved in whaling in their own right. Growing food for the whaleships was an important local industry. A whaler based at Cloudy Bay wrote that the the “natives here plant their potatoes upon the ridges and sides of the hills and keep the low ground for maize or sweet potatoes”.¹⁸⁷ In July 1836 the whaleship *Marianne* traded 68lbs of tobacco at Cloudy Bay for ten hogs, ten baskets of potatoes, and ten baskets of turnips.¹⁸⁸ Cook Strait Maori had by this time acquired a taste for tobacco, seemingly, but it was also used as a kind of currency. Guns were also taded by whaleship captains in exchange for foodstuffs: indeed the whaling industry may have yielded more guns than the flax tade.¹⁸⁹ In his scholarly history of the whaling industry in New Zealand Harry Morton notes the practise that

¹⁷⁹ There is a reproduction of a coloured lithograph of this station in Day, *Shore Whaling*, 4-5.

¹⁸⁰ Morton, *Whale’s Wake*, 160.

¹⁸¹ On Evans see Morton, *Whale’s Wake*, 243.

¹⁸² Morton, op.cit., 160.

¹⁸³ Wakefield, Journal, ATL qms2102, entry for 16 October 1839.

¹⁸⁴ See the reproduction of a watercolour copy of a sketch by J A Gilfillan of the Waiorua Bay station in Day, *Shore Whaling*, 8-9.

¹⁸⁵ Thoms, or Toms, was married to Te Ua Torikiriki, daughter of Watarauhi Nohorua of Ngati Toa.

¹⁸⁶ See the discussion in Morton, op.cit., 202-3.

¹⁸⁷ Cited Morton, *Whale’s Wake*, 180.

¹⁸⁸ Morton, op.cit., 187.

¹⁸⁹ Morton, *Whale’s Wake*, 204: “Whaleship captains were a major, perhaps the major source of arms for the Maoris, and sold guns to them long after British annexation.”

developed in Cook Strait whereby Maori would harpoon a whale and hand it over to a European-owned shore station's boat for £20 or so.¹⁹⁰ There were changes to material culture as well. Duck cloth was used by Maori to make sails for canoes, and the long steering oar used on whaleboats was also copied and attached to canoes.

At Kapiti and Cloudy Bay the presence of whalers and traders preceded the arrival of the Anglican and Wesleyan missionaries, a fact which had certain consequences for the missions, as Morton notes:¹⁹¹

[I]n the South Island and the Cook Strait area of the North Island the shore whaling stations were there first. This meant that there was a European population which not only pre-dated the missionaries, but which might easily become permanent. This altered the situation in several respects. As one Wesleyan missionary said of Cloudy Bay, "if missionary operations were commenced here, there would be more opposition from civilized Europeans than from the untutored barbarians."

Many whalers had Maori wives, and by the time of the acquisition of British sovereignty in 1840 there was already a half-caste population growing up around Cook Strait. William Wakefield noticed this when he arrived on the *Tory* in 1839.¹⁹²

There are nevertheless some respectable men, who are anxious for a better state of things to be brought about by the example of society better regulated by a better law than that of might. Many of their native wives are entitled to every praise for their fidelity, care of their children and industry during many years of difficulty and dangers and are fit to take a very respectable station amongst European Matrons. The half-caste race, of whom there are about 25 at Teawaiti, is most promising. They are in general well built and comely. None of them are darker than Italians – many have flaxen hair and rosy complexions and all are as active and hardy as their mother's blood and naked sea-shore existence could lead you to expect.

In fact there was a certain cosmopolitan flavour to life in the Cook Strait region which those on the *Tory* could not help noticing. By the time the *Tory* arrived there had been a European presence in the area for a decade or more. Some Maori had also travelled overseas and were familiar with Hobart and Sydney (some - such as Te Pehi - had been to England). The establishment of an informal British presence of trade and commerce, deriving not from Britain directly but from New South Wales and Van Diemen's Land, must have led to many

¹⁹⁰ Morton, op.cit., 173.

¹⁹¹ Morton op.cit., 200.

¹⁹² William Wakefield, *Journal*, ATL, qms 2102, entry for Sept 6 1839.

changes in material culture. Dieffenbach wrote about the complex processes of interaction in the region:¹⁹³

The natives inhabiting both shores of Cook's Straits were at the time of my arrival placed in a position which could not fail to awaken my deepest interest. Although their number is not large, taking them as a whole, yet they live so much dispersed in small tribes that they occupy a long coast-line. For the last fifteen or twenty years they have associated with Europeans, who have lived amongst them as traders or as whalers; and they were annually visited by many whaling vessels. Mutual advantage, and the connection of almost of all these Europeans with native women, from which connection a healthy and fine-looking half-caste race has sprung up (about 160 in number), kept the white men and the natives in harmony with each other, and has cemented their union. Thus we find Europeans arrayed against Europeans in the combats of the different tribes amongst whom they lived, or following the hazardous chase of the whale with a crew of natives. When dead they were bewailed as brothers by these sons of nature, and a painted canoe erected as an ornament over their graves. Many runaway convicts from New South Wales and Australia were amongst these irregular settlers, many of whom were men of desperate character. The society was a curious motley of men of all nations and colours, who had lived an adventurous life from their childhood; yet, with all these elements of vice among them, the natives had preserved many of their good qualities; and the colonists of the Company found them better prepared to acknowledge a more regulated state of society, and to acquiesce in present sacrifices with a view to their future benefit, than was the case with the natives in the more northern parts of the island, although missionaries had lived among them during a long period. None of these missionaries have paid Cook's Straits more than a passing visit, yet many of the natives were initiated into the tenets of Christianity, and could read and write, having learned these arts from mutual instruction. The zeal of these new proselytes went so far as often to cause me annoyance.

Some whalers, including Evans and Thoms, also entered into land transactions of various kinds with Ngati Toa, which were investigated in turn by Commissioner Spain as Land Claims Commissioner and reported on them by him in March 1845. (One of these claims, Thoms' claim to land at Paremata, turned out to have a particularly complicated aftermath.) These claims are dealt with fully below.

3.4 The CMS and Wesleyan missions

As Dieffenbach noted, Christianity arrived in the Cook Strait area well before the formal establishment of the missions: the spread of the Christian faith and of literacy in Maori were

¹⁹³ Dieffenbach, *Travels in New Zealand*, John Murray, London, 1843, 191.

to a large extent Maori initiatives; there are of course parallels elsewhere in the Pacific.¹⁹⁴ There was no CMS (Anglican) mission in existence anywhere in the South Island until August 1842, when the Reverend Charles Reay arrived at Nelson. The nearest CMS mission base until that time was the Reverend Octavius Hadfield's mission at Otaki and Waikanae, established in 1839. The arrival of the CMS in Te Tau Ihu was preceded by the establishment of the Wesleyan mission at Port Underwood (that of the Reverend Samuel Ironside¹⁹⁵). This mission ministered to the large Ngati Toa community at Port Underwood which was led by Rawiri Puaha.

*	1848-1870	Octavius Hadfield
*	1849-1853	Samuel Williams
*	1865-1866	Riwai Te Ahu
*	1866-67	Amos Knell
*	1868-1901	James McWilliam

One of the casualties of the Wairau collision was the Wesleyan mission at Cloudy Bay. With the flight of his parishioners after the battle the Rev. Samuel Ironside could see no point in remaining, and on 29 July 1843 Samuel and Sarah Ironside left on the government brig *Victoria* and moved to Wellington where they remained for the next six years. From Wellington, however, Ironside was still able to see Rawiri Puaha, who had brought his people across the Strait and settled for the time being at Plimmerton.

3.5 Population

A. *Population 1800-1840*

Years later, noting the reluctance of Ngati Toa and the other tribes to part with their prized lands in the Cook Strait region, McLean wrote:¹⁹⁶

To this part of the Country from its past associations, the Natives attach great importance, as the scene of so many hard-fought battles and of final conquest, the great resort moreover in former years of whale ships from different parts of the world, with which they carried on a

¹⁹⁴ See Ian Breward, *A History of the Christian Churches in Australasia*, Clarendon Press, Oxford, 2001.

¹⁹⁵ On Ironside there is a useful biography by W A Chambers, *Samuel Ironside in New Zealand*, Ray Richards in association with the Wesley Historical Society, Auckland, 1982.

¹⁹⁶ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85, 1576.

lucrative trade; they could also at seasons of the year resort to its well-sheltered bays and harbours for supplies of fish.

But perhaps the most eloquent comments on land and population come from George Clarke jr., the sub-Protector of Aborigines at Port Nicholson. He greatly admired Ngati Toa and understood their attachment to their lands, but could not help but notice their declining numbers. He put this down to disease and also 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 1843.¹⁹⁷

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.

Maori population declined steeply everywhere during the nineteenth century. In his well-known study of Maori health, *Whaiora: Maori Health Development*¹⁹⁸ Professor M H Durie carefully considers the evidence relating to Maori population decline, which may have begun as early as 1805. It is impossible to give precise figures for the extent of the decline, but the overall trend, he believes, is only too clear: “exaggerated or not, the situation for Maori was grim”.¹⁹⁹ Durie notes the effects of epidemic diseases, especially measles, influenza (rewharewha), whooping cough, typhoid, scarlet fever and mumps. There was also tuberculosis, which was of course persistent and chronic, rather than epidemic, and which remained a terrible scourge until quite recently. One problem which exacerbated Maori health problems, Durie believes, was the fact that Maori tended to move from hilltop kainga to coastal locations which may have provided enhanced opportunities for commercial relationships with the Pakeha world, but which “lacked orderliness” and which had “fewer public health amenities such as clean water, sanitation and drainage”.²⁰⁰

B. *Dieffenbach's census*

¹⁹⁷ George Clarke jr. (sub-Protector, Wellington) to George Clarke sr. (Chief Protector, Auckland), 24 May 1843, qMS 0469 WATL (original in DHL).

¹⁹⁸ Oxford University Press, Auckland, 1994.

¹⁹⁹ Ibid, 32.

²⁰⁰ Ibid, 35; see also P. Buch (Te Rangihiroa), *The Coming of the Maori*, 1949, 130.

Dieffenbach calculated in 1840 that the Maori population of the Northern South Island was about 1410.²⁰¹ This was made up of 400 people in Massacre Bay and Blind Bay, 60 people on Rangitoto (D'Urville), 250 people at Te Hoiere, 390 in Queen Charlotte Sound, and 400 at Cloudy Bay. These are coastal settlements, and Dieffenbach did not venture inland, but whether there were many people inland is very hard to know. Dieffenbach attempts to record the various iwi/hapu affiliations, but does not distinguish between Ngati Toa, Ngati Koata and Ngati Rarua: they are all Ngati Toa. They amounted to 500 people in all, in fact the largest grouping in Te Tau Ihu at that time. There were at least 400 'Ngati Toa' people at Cloudy Bay, more, in fact, than at Porirua, Kapiti and Mana (320). Dieffenbach's census is as follows:

Maori Population, Northern South Island c. 1840

[source: Dieffenbach, I, 195]

NAME OF PLACE	NAME OF THE TRIBES	FAMILY	NUMBER
Massacre Bay	Ngati Toa		
Wanganui	Puketapu	Ngati Awa	400
Blind Bay	Ngati Tama		
Rangitoto	Ngati Toa	Ngati Awa	60
Admiralty Is.	Ngati Toa	Ngati Awa	
	Manakuri		250
Heoiri River	Rangitane	Rangitane	
Queen Charl. Sound			
Anaho	Puketapu		60
Moioio	Ngati Toa	Ngati Awa	150
Te Awa-iti	Nga-motu		60
Hokukuri	Ngati Tama		120
Cloudy Bay	Ngati Toa	Ngati Awa	400

C. Population in 1860

²⁰¹ Dieffenbach, *Travels in New Zealand*, vol 1, 195.

The Maori population of Te Tau Ihu seems to have remained relatively static over the next twenty years. By 1860, according to a report sent to London by Governor Gore Browne, the Maori population of the whole South Island was “between two and three thousand, of whom one half dwell in the Province of Nelson”.²⁰² The other half would be Ngai Tahu, presumably. Gore Browne’s guess may indicate that the well-documented movement of people from Te Tau Ihu following the Wairau in 1843 did not have any permanent irreversible effect, showing that most may have gone back, or it may indicate that Dieffenbach’s figure was something of an underestimate. Given the notorious unreliability, however, of virtually all 19th century Maori census data, all generalisations here are very risky.

D. Population in the 1870s

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).²⁰³ Groups were still moving north: Mackay mentions the departure of a Ngati Rahiri group living in Queen Charlotte Sound who had recently left for Taranaki. By 1875 virtually the entirety of the South Island had passed out of Maori hands. In that year Mackay calculated that there were only four areas in customary title left, these being Ruapuke, Rangitoto, Whakapuaka and West Whanganui.²⁰⁴ In his 1876 report he notes continued departures to Taranaki and the Waikato, and the continued impact of epidemics. The birth rate had fallen well behind the death rate. An epidemic of “low fever” (whatever that may have been) swept through the Maori communities of the Pelorus and the Wairau in December 1875. By 1875 the population had fallen again, with the total Maori population for Nelson Marlborough and Westland now at 692. Ngati Toa were still living at the Wairau and Pelorus Sound.

3.6 Social Impacts of Colonisation

A. Effects of the New Zealand Company settlements

The New Zealand Company towns were major agencies of change to the economy and social geography of the Cook Strait region. Maori settlement of the Cook Strait area in pre-European times was overwhelmingly coastal. One historical geographer who has studied the changing historical geography of the Tawa-Porirua basin has noted that in the Wellington area – and,

²⁰² Gore Browne to Newcastle, 22 February 1860, CO 209/153, DB 1604-1623, at 1605.

²⁰³ *Further Reports from Officers in Native Districts*, 1874 AJHR 2C.

²⁰⁴ 1875 AJHR G-3, 3.

presumably, in the Te Tau Ihu area as well – “there was not a pa, village or hamlet which was more than half a mile from the coast”. The inland forests “seems to have been used only as a food preserve and as a place of refuge in time of invasion”.²⁰⁵ With the establishment of Wellington this changed. Maori moved from the ‘outer’ to the ‘inner’ coast, in the case of Ngati Toa establishing themselves at Takapuwhia. This allowed them to be near the main route to the north from Port Nicholson to Wanganui, allowing them “to supply traders with provisions, and to furnish guides for what was a fairly hazardous journey”. Secondly they were better placed to supply “the infant settlement of Wellington with provisions and livestock, particularly during the difficult early days of the settlement”.

B. *Population movements*

It has already been mentioned how after the Wairau the once-thriving Ngati Toa community at Cloudy Bay broke up and the people returned to the North Island. Phillipson has noted that many of those who left at this point did not return, and that the “population of Marlborough was permanently reduced”.²⁰⁶ On 16 June 1843 George Clarke reported that “the Ngati Toa tribe have left for a time their possessions in New Munster” [i.e. in the South Island]. They “intend to remain at Porirua until they are satisfied it will be safe for them to return to the district in the vicinity of Nelson, Queen Charlotte’s Sound, Cloudy Bay”.²⁰⁷ One source which clearly documents this are the journals of the Reverend Ironside, the Wesleyan (i.e. Methodist) missionary at Cloudy Bay. By June 24 June 1843 “the natives have gone away from here afraid of the Europeans, taking with them ammunition and all their property”.²⁰⁸ Ironside tried to persuade the people to stay, but without success. With the loss of his parishioners Ironside could see no point in remaining at Port Underwood and on 29 July he and his wife Sarah moved to Port Nicholson where the couple remained for the next six years. Ironside was able however to remain in contact with the Ngati Toa chief Rawiri Puaha, who had brought his people from Port Underwood and Cloudy Bay to Plimmerton.

²⁰⁵ B.A.G. Murray, *The historical geography of the Tawa-Porirua basin*, M.A. Thesis, (Geography), Canterbury University, 1965, 16.

²⁰⁶ Phillipson, *Northern South Island*, 65,

²⁰⁷ Official report of George Clarke jr., 16 August 1843, *Appendix to the 1844 House of Commons Select Committee Report on New Zealand*, BPP(NZ), Irish University Press edition, vol 2, 337.

²⁰⁸ Ironside Journal, MS 3817/2, Alexander Turnbull Library, entry for 24 June 1843.

4 Confrontation with the Colonial State, 1840-46

4.1 The Crown and the Formation of Imperial Policy²⁰⁹

It is important to note the shifts in Crown policy in the 1830s and 1840s, as these shifts had very definite implications for Ngati Toa's fate (this is as true for events on the Kapiti Coast as it is for Wellington and for developments in the Northern South Island). The British Empire was both liberal and coercive. The 1830s was a period when humanitarian concern played an important role in the formation of policy: as Raewyn Dalziel puts it, New Zealand "[came] within the Empire at a moment of liberal humanitarianism".²¹⁰ One key step was the abolition of slavery in 1833²¹¹ (Britain had earlier abolished the slave *trade* in 1807).²¹² Another key step was the parliamentary address to the Crown of July 1834 sponsored by the radical Liberal MP Thomas Fowell Buxton seeking an inquiry into the conditions of indigenous peoples in British possessions. In July 1835 a select committee of the House of Commons under Buxton's chairmanship began its inquiries into the conditions of the native peoples of the empire, which presented a major report on the subject to the House in June 1837.²¹³ The report, largely written by Buxton himself, stated that "it might be presumed that the native inhabitants of any land have an incontrovertible right to their own soil; a plain and sacred right, however, which seems not to have been understood".²¹⁴ Furthermore, it "appears to be the moment for the nation to declare, that with all its desire to give encouragement to emigration, and to find a soil to which our surplus population may retreat, it will tolerate no scheme which implies violence or fraud in taking possession of such a territory".²¹⁵ This report was very influential. Sir George Gipps, a liberal and humane governor, tried to put it into practice as governor of New South Wales. It had impacts on colonial office policy and influenced Governor Fitzroy of New Zealand. In the climate created by this report the New Zealand Company faced considerable difficulties in gaining support for its project from the Crown. But by the mid-1840s all had changed.

²⁰⁹ For a useful discussion see especially Loveridge, *An Object of the First Importance*, 15-18.

²¹⁰ Raewyn Dalziel, "Southern Islands: New Zealand and Polynesia", in Andrew Porter (ed), *The Oxford History of the British Empire: The Nineteenth Century*, Oxford University Press, Oxford and New York, 1999, 573.

²¹¹ On the political background to abolition see Robin Blackburn, *The Overthrow of Colonial Slavery*, Verson, London and New York, 1988, 452-459. Abolition was achieved by parliamentary enactment of the Abolition of Slavery Act 1833, which took effect in 1834.

²¹² The Waitangi Tribunal has unfortunately confused the two in its Rekohu Report.

²¹³ For a full analysis of the report see Roger Milliss, *Waterloo Creek: The Australia Day Massacre of 1838, George Gipps and the British Conquest of New South Wales*, University of New South Wales Press, Sydney, 1992, 226-233.

²¹⁴ Cited Milliss, *op.cit.*, 227.

²¹⁵ *Ibid*, 229.

4.2 “To make a Native aristocracy”: The New Zealand Company and the ‘Tenths’ scheme

The New Zealand Company was formally established in London on 2 May 1839, constituted from the earlier New Zealand Association.²¹⁶ The Company issued its New Zealand prospectus on 2 May 1839 and then proceeded to advertise 990 lots of Port Nicholson land for sale in London. A key aspect of the Company’s project was its ‘tenths’ scheme by which Maori would be allocated reserves within the areas purchased from Maori as a beneficial endowment and (as Wakefield put it) the “true consideration”²¹⁷ for the land. At Wellington this meant that Maori would be allocated 110 urban lots and 110 100-acre rural allotments (11,110 acres) as an endowment.²¹⁸

Wakefield had concluded that reserves or reservations of the North American type did more harm than good. Such reserves, he told the the House of Commons Select Committee on New Zealand in 1840 were “very common things”; they “have been going on for three hundred years” but they “have never done any good yet”.²¹⁹ Such reserves just served “to isolate the Natives from the whites”, leaving the former “in a state of barbarism”. In Wakefield’s mind the way to “preserve the Native race” was to actually create, or perpetuate, a wealthy Native aristocracy by means of the allocation of reserves. The aim was to avoid to racial exclusion and separatism. In Wakefield’s words:²²⁰

The Company, having paid great attention to this subject, came to the conclusion that if the inferior race of New Zealand can be preserved at all in contact with civilized men it can only be by creating in civilized society a class of Natives who would retain the same relative

²¹⁶ Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 45.

²¹⁷ Edward Gibbon Wakefield to House of Commons Select Committee on New Zealand, cited in Jellicoe, *New Zealand Company’s Native Reserves*, 9.

²¹⁸ Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 47. Like the European sections these would be allocated by lottery in London. In its analysis of the project the Waitangi Tribunal has usefully indicated some of the uncertainties of the scheme (bid):

Company plans were vague on the tenure of the lands to be reserved from for Maori, though it was assumed that initially the land would be held in trust for the Maori chiefs. No provision was made for Maori not of chiefly rank, but it was assumed that they, like the British labourers, would have to earn a living in the employ of their chiefs or colonists and that they could eventually buy land. The company assumed that Maori would surrender their existing habitations and cultivations and move on to their selected tenths. It was a very naïve scheme, but it accommodated humanitarian concerns and was dressed up in the grandiloquent language of the civilising mission. The Maori chiefs, pepper-potted among the British settlers, would profit from the rising value of their land and would acquire the civilised habits and customs of their neighbours.

²¹⁹ Wakefield to House of Commons Select Committee, 1840, cited in Jellicoe, *New Zealand Company’s Native Reserves*, 9.

²²⁰ Ibid.

superiority of position which they had enjoyed in savage life. They determined, therefore, if possible, to make a Native aristocracy, a Native gentry, and for that purpose to reserve lands as valuable property.

And as noted above, it was the ‘tenths’ allocation which Wakefield saw as the “only true consideration” for the land. Wakefield explained:²²¹

[The Company] instructed their agents, whom they despatched to New Zealand, to pay but little attention to the subject of the first consideration-money for the land, because they regarded all the payments that had been made in New Zealand by missionaries and others only as little more than nominal; and they laid down a plan of reserves of land for the Natives which they hoped would become in the long-run a very valuable consideration indeed.

Even assuming that Wakefield’s words can be taken at face value as representing the true objectives of himself and of his colleagues, the flaws, gaps, incoherence and above all the amazing naivety of the scheme are obvious. The ‘tenths’ scheme was conceived in London in isolation from New Zealand realities. The whole point of the allocation-reserve scheme was that sections were to be allocated in random lots, the Maori reserve sections distributed around the sold sections in no particular order, which would have obviously meant that no account could be taken of existing settlements and cultivations. It does not require the benefit of hindsight to see that this would become a problem (as, of course, it did). The vision, a beguiling and progressive one in some ways, seemed to envisage that Maori could virtually overnight change to become town dwellers and rentiers (it presumably not necessarily being expected that Maori would actually *live* on all of their allocated sections, but would lease some, or maybe most, of them).

The Company’s preliminary expedition, led by Colonel William Wakefield who brought with him formal instructions on the principles he was meant to apply in purchasing land,²²² reached New Zealand in August 1839. The Company vessel, the *Tory*, had left

²²¹ Ibid.

²²² The instructions were prepared by the company secretary, John Ward. They have been analysed fully by the Waitangi Tribunal in its *Wellington* report, at p 49:

He was to explain ‘with the utmost frankness’ that the purchase was intended to establish a settlement of Englishmen, like those at Hokianga or the Bay of Islands, ‘or rather on a much larger scale, like the English settlements in New South Wales and Van Dieman’s [sic] Land’. He was not to complete a purchase until this was “thoroughly understood by the native proprietors, and by the tribe at large”. He was to be “especially careful” that all owners of the land approved the bargain and received a share of the purchase money. The boundaries of the land were to be “most clearly set forth, not merely in words, but in a plan attached to the written contract”. The transactions were to be witnessed, preferably by a missionary, since the “natives probably attach some peculiar importance to the attestation of a missionary”. Finally, Wakefield was to explain the company’s tenths scheme and “take care to mention in every *booka-booka*, or contract for land, that a proportion of the territory ceded, equal to one-tenth

England a week before Captain Hobson left England on HMS *Druid*, armed of course with *his* instructions from the Colonial Office. The British government (which at this time was considering the various options by which annexation in New Zealand might take place) absolutely declined to support the New Zealand Company in its endeavours, at least at first, and the Company was informed that any land acquired in New Zealand by British subjects prior to annexation would be regarded as passing into the ownership of the Crown, albeit with some claim to compensation to private purchasers.²²³ Once in New Zealand, however, Wakefield was to draw up three New Zealand Company deeds of 27 September (Port Nicholson), 25 October (the Kapiti deed) and of 8 November 1839 (the Queen Charlotte Sound).²²⁴

The *Tory* (which was well-armed with cannon and firearms) went first to Queen Charlotte Sound. Wakefield discussed local politics with Maori and other locals, and began to form a picture in his mind of iwi relations and rights to sell land. He thought that the “laws of property are very undefined in this part...neither Raupero nor Hiko possesses the power of absolute disposal of any portion of land in the straight – nor can it be acquired by obtaining the consent of many claimants, or part proprietors as in the northern part of the northern island”.²²⁵ The *Tory* spent about five weeks exploring the Marlborough Sounds and Cloudy Bay districts. Dieffenbach and Wakefield saw the plains of the Wairau and thought the area ideal for the site of a new colony, although the area lacked a good harbour. Then Wakefield learned that Henry Williams was about to arrive in the region and warn Maori not to sell land to the Company. Williams was a formidable and well-known adversary of the Company and its colonising plans. Philip Temple believes that it was the impending arrival of Williams that

of the whole, will be reserved by the Company, and held in trust by them for the future benefit of the families of the tribe”. Wakefield was to explain that, after colonisation had progressed, those tenths would be far more valuable to Maori than the whole of their land had been beforehand. Moreover these chiefly families would have “every motive for embracing a civilized mode of life”. “Instead of a barren possession with which they have parted, they will have property in land intermixed with the property of the civilized and industrious settlers, and made really valuable by that circumstance”.

²²³ Labouchere to Hutt, 1 May 1839, in Turton *Epitome*, AIII No.2, p 159: “Lord Normanby now for the first time learns that a body of Her Majesty’s subjects are about to proceed to New Zealand to purchase large tracts of land there, and to establish a system of government independent of the authority of the British Crown. It is impossible that his Lordship could do any act which could be construed into a direct or indirect sanction of such a proceeding”. The memorandum went on to state that “if, as appears probable, the Queen should be advised to take measures without delay to obtain cession in sovereignty to the British Crown of any parts of New Zealand which are or shall be occupied by Her Majesty’s subjects...no pledge can be given for the future recognition by the Her Majesty of any proprietary titles to land within New Zealand, which the Company or any other persons may obtain by grant or purchase from the Natives”. See also Loveridge, *An Object of the First Importance*, 15: “The Crown, in other words, intended to assume ownership of any and all lands which Maori had permanently alienated before sovereignty was ceded to the Queen, and to dictate what “compensation” (if any) the European purchasers might receive”.

²²⁴ The Waitangi Tribunal has already concluded that all three deeds “were flimsy transactions at best”: *Te Whanganui a Tara*, 59.

²²⁵ William Wakefield, *Journal*, 29 August 1839.

led to the decision to immediately take the *Tory* across Cook Strait and obtain land at Wellington – that is, before Williams could arrive and talk Maori out of land-selling.²²⁶ Williams, who had become disillusioned with Nayti, (Ngati, or Nahiti) the young Ngati Toa man that the expedition had brought from England as the expedition interpreter, decided to instead use the services of Dicky Barrett. Barrett was a whaler who had been in New Zealand for eleven years and was married to Ngati Awa woman. He seems to have been a poor choice as interpreter. George Clarke jr. later said Barrett spoke “whaler Maori, a jargon that bears much the same relation to real language of the Maori as the pigeon English of the Chinese does to our mother tongue”.²²⁷ The real reason for choosing Barrett, however, is given by Edward Jerningham Wakefield, who wrote that “Dicky Barrett promised to be most advantageous to us, as he was related by his wife to all the influential chiefs living in Port Nicholson”.²²⁸

The *Tory* arrived at Port Nicholson and anchored at Pito-one, the pa of Ngati Tawhirikura and Ngati Te Whiti, who were related to Barrett’s wife.²²⁹ Negotiations went on for about five days. On 27 September Wakefield displayed six piles of goods for each of the settlements around the harbour rim, Petone, Kaiwharawhara, Ngauranga, Pipitea, Kumutoto, Waiwhetu and Te Aro. Not all had wanted to sell land to the Company. The most vocal opponent was a rangatira named Puakawa, but “he capitulated when he saw the goods being distributed”.²³⁰ The deed itself was drawn up by Edward Jerningham Wakefield. It is hardly necessary to pursue the question here whether there was a true meeting of minds with regard to this transaction, for of course there could not be. A ‘meeting of minds’ was not even Wakefield’s objective. Rather, his “chief motivation was to get a deal done as quickly as possible, before the missionaries or the British government interfered with the company’s plans”.²³¹ All the Company needed was some kind of equitable title which could be converted at some stage into a strong legal title by negotiating with the Crown – this being a tried and true practice on all imperial frontiers. E J Wakefield later admitted that that in his view was “extremely difficult – any almost impossible – to buy a a large and distinct tract, from any

²²⁶ See Philip Temple, *A Sort of Conscience*, 247.

²²⁷ George Clarke jr., *Notes on Early Life in New Zealand*, cited Burns, *Te Rauparaha*, 214, also Waitangi Tribunal, *Te Whanganui a Tara*, 52. See also Temple, *A Sort of Conscience*, 246-7. Temple agrees that Barrett was incompetent, and cites evidence which demonstrates that Barrett failed to communicate clearly the nature of the ‘Tenth’s’ scheme, but he also believes that “too much weight has been placed upon the inadequacy of Barrett’s interpreting”.

²²⁸ Edward Jerningham Wakefield, *Adventure in New Zealand*, vol i., 36.

²²⁹ Waitangi Tribunal, *Te Whanganui a Tara*, 52.

²³⁰ Waitangi Tribunal, *Te Whanganui a Tara*, 56.

²³¹ Temple, *A Sort of Conscience*, 250.

native or body of natives in this part of New Zealand”. They were “perfectly unused” to “any dealing in land according to our notions”.²³²

The Kapiti deed, the most important of the three for the purposes of this report, was marked by Te Rauparaha and 10 other chiefs of the Kapiti area. Supposedly the Company acquired as a result a huge area of land on both sides of Cook Strait, all land north of a line from 43 degrees south (near the Hurunui river) and south of a line from 38 degrees south on the west coast of the North Island to 41 degrees south on the east coast, about 20 million acres in all.²³³ The deed specified the payment (arms, utensils, clothes etc.) but, perhaps strangely given Wakefield’s instructions, said nothing about any programme of ‘tenths’ reserves. However according to Anderson and Pickens:²³⁴

While Ngati Toa were not specifically promised ‘tenths’, Wakefield did make a pledge that a portion of the land ceded by them, suitable and sufficient for the proper residence and maintenance of the said chiefs, their tribes and families would be ‘reserved and held in trust’ by the company for their future benefit.

The Queen Charlotte Sound deed was more or less the same as the Kapiti deed, and was executed by 30 Maori of Queen Charlotte Sound on 8 November, who seem to have been mostly Ngati Awa people. The consideration that the Company paid for the lands it “bought”, as Alexander Mackay, Commissioner of Reserves was later to put it, “consisted entirely of articles of barter, the value of which is difficult to determine”.²³⁵ These transactions have been covered fully in a number of reports and studies. Only the Kapiti transaction will be considered in this report, which is discussed separately below.

While the interpretation of the deeds drawn up in New Zealand is obviously significant, it is also important to clearly understand what was happening in the United Kingdom while the *Tory* was making its way to, and around, the Cook Strait region. The best and clearest description is still that in R L Jellicoe’s *New Zealand Company’s*

In 1840 the Company had a window of opportunity when Lord John Russell replaced Lord Normanby at the Colonial Office. Russell was much more sympathetic to the Company’s aspirations than his predecessor, and it was this sympathy which led to the all-important agreement of November 1840 by which the Crown guaranteed to the Company 4

²³² E J Wakefield, *Adventure in New Zealand*, as cited Waitangi Tribunal, *Te Whanganui a Tara*, 55.

²³³ Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 59.

²³⁴ See Anderson and Pickens, *Wellington District*, 23, citing second deed of purchase, 25 October 1839. In fact the Company Surveys did indeed divide Porirua up into country sections available for ballot and selection and allotted sections there as part of the Tenths scheme.

²³⁵ Report by Alexander Mackay, Commissioner of Native Reserves, 1873 AJHR G-2B, 2.

acres of land in New Zealand for every pound spent – an agreement which decisively shifted the nature of the Company’s land claim from its very shaky foundation of the 1839-40 deeds to the much more secure one of an agreement with the Crown.²³⁶ The agreement, however, “assumed that the Company’s original purchases were valid – an assumption that was accepted by the Company’s representatives in Great Britain and New Zealand”.²³⁷ The Company’s expenditure was subsequently audited by James Pennington, an accountant, who on 28 April 1841 calculated that the Company was entitled to 531,929 acres, making a further award of 180,664 acres on 11 January 1843.

The November agreement also referred explicitly to the ‘tenths’ scheme. By clause 13 of the agreement it was “understood” that.²³⁸

that the company have entered into engagements for the reservation of certain lands for the benefit of the natives, [and] it is agreed that, in respect of all the lands so to be granted to the company as aforesaid, reservations of such lands shall be made for the benefit of the natives by Her Majesty’s Government, in fulfilment of and according to the tenor of such stipulations; the Government reserving to themselves, in respect of all other lands, to make such arrangements as to them shall seem just and expedient for the benefits of the natives.

This indicates, as Anderson and Pickens note, that “[f]rom this point, it was considered that the ‘tenths’ vested in the Crown which was to take control of their management at a very early stage in their history”.²³⁹ The ‘tenths’ did not vest in *Maori* but rather in the Crown *in trust for Maori*: the Crown was the legal owner, Maori were the beneficiaries or *cestuis que trust*. And on 12th February 1841, in pursuance of the November agreement, the Company was issued a Charter by the British government.²⁴⁰

²³⁶ See generally Tonk, “Difficult and complicated question”, 36-7.

²³⁷ Ibid. But Tonk may not be correct about that. At least Lord John Russell certainly did intend to have the Company’s claims to land in New Zealand investigated. In November 1840 Russell learned that Sir George Gipps, the Governor of New South Wales, intended to appoint Commissioners to investigate land claims in New Zealand. Russell directed Gipps to take no steps with regard to New Zealand land transactions and advised Gipps of the discussions that had taken place between the Company and the British government (“You will defer the execution of any powers that may be given to you by the [New South Wales] Bill above alluded to, should it pass into law, until you shall receive further instructions from me on the subject” (Russell to Gipps, 21 November 1840, reprinted in Turton, *Epitome*, A III No 11, p 163). Further:

You will understand, however, that it is not my intention to abandon the plan of instituting a Commission to inquire into the titles or claims to land in New Zealand, but that, on the contrary, I fully intend to carry it into execution, and that I write the present instructions in order that means may be taken for executing it with the greater accuracy as well as acknowledged impartiality. For this purpose I shall probably find it necessary to send out a Commissioner from this country.

²³⁸ Russell to Hobson, GBPP (IUP), NZ, vol 3, 87.

²³⁹ Anderson and Pickens, *Wellington District*, 24.

²⁴⁰ Report by Alexander Mackay, Commissioner of Native Reserves, 1873 AJHR G-2B, 2.

These were very significant concessions for the British government to make, and can be said to represent a diplomatic victory for the Company. In fact the Company was placed in a privileged position compared with all other pre-Treaty land buyers (there were thousands of such transactions). In the case of the New Zealand Company the Crown had agreed that the Company could have a fixed acreage of land in New Zealand based on the amount of money the Company had spent as discoverable from an audit of its accounts carried out in England. The Company was always to argue that it had been *guaranteed* title to a fixed acreage as a result of the agreement with Russell. Although the British government instituted an enquiry into the Company's claims in New Zealand, the process of enquiry was in fact always burdened by the Company's acreage claim, on the basis of which land was on-sold to settlers, 'tenths' sections allocated to Maori and so on. One of the reasons why Grey – in pursuance, it must be remembered, of his instructions from the Crown – drove through the Porirua and Wairau purchases in 1847, was to accommodate the New Zealand Company sections which had surveyed lands and allocated sections at both of these places.

Russell also established the Colonial and Land Emigration Commission, an official body set up to manage the alienation of "waste lands" in British colonies and to apply the income so generated to promote emigration and colonial development.²⁴¹ The new Commission received its instructions from Russell on 14 January 1840. Russell's instructions seem to have been founded on the assumption not only that "waste" lands in British colonies vested *in dominium* in the Crown,²⁴² but also that such lands were held by the Crown in trust, with a responsibility to spend the revenues generated by their sale for the public benefit.²⁴³ The Commissioners' main field of operations, however, "was to be the Australian colonies".²⁴⁴ Due to the opposition of Governor Gipps this particular experiment did not last

²⁴¹ The importance of the Colonial Land and Emigration Commissioners is sometimes overlooked, but has recently been given proper emphasis by Loveridge: see Loveridge, *An Object of the First Importance*, 30-34.

²⁴² See Loveridge, *Object of First Importance*, 31, citing *Colonial Gazette* of 12 Feb. 1840, #64, pp 106-109:

In every Colonial possession of Great Britain, in which wild and unoccupied lands have been found,...such lands are vested in the Sovereign in right of the Crown, and that every private title must rely on a Royal grant as its basis.

²⁴³ See Loveridge, *Object of First Importance*, 31. Loveridge notes:

The second principle was newer, but "not less important, or in itself less clear". Since 1831, Russell noted, it had been acknowledged the Crown held "waste lands" in trust for the public good, and could not "without a breach of that trust on the part of the responsible Ministers of the Government, be advised to make to any person a gratuitous donation of any such property". Rather, the revenues generated by sale had to be "appropriated to public uses and for the public benefit". These included expenditures designed to promote "the future improvement" of the colony in question – such as "roads, quays, towing-paths, sites of public buildings and of military defences, sites of churches, schoolhouses, cemeteries and places for public recreation and health" – and those required to assist in meeting the "pressing and necessary demands of the local government, for which no other resource can be found", with the remainder being devoted to emigration.

²⁴⁴ Loveridge, *Object of First Importance*, 32,

long, but while it did the actions of the Commissioners in attempting to sell land in New Zealand led to a collision with the New Zealand Company in early 1841.²⁴⁵ (The sale by the Commissioners was abandoned.)

The Company's political problems were not over with, however, for in 1841 the Whig government fell and was replaced by a Tory government led by Sir Robert Peel. Peel's government lasted until 1846, when Peel split his own party over the repeal of the Corn Laws, which led to Whigs (led by Russell) regaining office. The Tory Colonial Secretary, Lord Stanley²⁴⁶, was no friend at all of the Wakefields and the Company, and for some years the Company's political star dimmed considerably, at the same time as Commissioner Spain was undertaking his investigations in New Zealand. Stanley had been especially incensed when the New Zealand Company, its pretensions reaching a pinnacle of audacity, had tried to sell the Chatham Islands to a German syndicate in 1843 – an initiative which Stanley soon squelched.²⁴⁷

While it is often believed that the arrival of Governor Grey in late 1845 marked a turning point in New Zealand history, the actual position is a little more complicated. There is something of a trend in New Zealand historiography that sees the new policies as reflecting Grey's personal views, but this is mistaken as Ian Wards has pointed out in a recent review,²⁴⁸ and in any case over-emphasises the ability of colonial governors to make policy. The decisive events were the Wairau incident of 1843 and the decision of Governor Fitzroy to take no action against Ngati Toa. The Wairau battle is thus pivotal, not only in Te Tau Ihu itself, but also as a key aspect of the shift to the Crown's coercive policies of 1845-8 of which Ngati Toa were the main victims, in both islands of course – principally by means of the Porirua and Wairau purchases. It was the pressure of events in New Zealand itself, skilfully exploited by the New Zealand Company's parliamentary supporters, which forced Stanley to make concessions to the Company. The Company's hand was of course further strengthened in 1846 with the return of the Whigs to power, with Lord John Russell, architect of the November 1840 agreement, now Prime Minister.

²⁴⁵ For the details see Loveridge, *Object of First Importance*, 33.

²⁴⁶ On Stanley see Burns, *Fatal Success*, 241-3.

²⁴⁷ On this episode see Burns, *Fatal Success*, 243.

²⁴⁸ See Wards, Review of Bohan, *To be a Hero: Sir George Grey, 1812-1898*, in *Landfall*, No 197, Autumn 1999, 166-8, at 167: "In fact the Colonial Office had finally reached the conclusion [that is, *before* Grey's appointment] that the apparent policy of moral suasion and the actual lack of provision of financial resources would not work. A policy more favourable to European settlement was to be put in place, in part advocating the same administrative acts for which Fitzroy had been reprimanded. The new policy would require a new governor, and Grey, so successful in South Australia, was first choice. But only first choice: should he not be available, the Governor of New South Wales was to appoint anyone that he thought suitable for the position. This *shifts the emphasis away from Grey to the new policy, and it follows that more attention should be given to that policy and less to the qualities of Grey.*" (emph. added).

4.3 “I was dissatisfied with this payment”: The 1839 Kapiti Transaction

Following the Port Nicholson Transaction (20 September- 3 October 1839) the New Zealand Company vessel *Tory* crossed Cook Strait and at Cloudy Bay met Nohorua and other Ngati Toa people living there. Wakefield soon learned of their dissatisfaction with the Port Nicholson deed and with the payments that had been made to Te Wharepouri.²⁴⁹

In order not to part with the people here on unfriendly terms, I had all the Chiefs of the Bay on board during the afternoon. They came dressed out in all their finery, and at their head was Raupero's brother, called “Tom Street” after some Sydney merchant. He came to have a “talk” about the Port Nicholson affair. As I saw they were determined to have a “korero” on the subject I took my station on the deck, nominated Mr Wynen's soi-disant wife interpreter, and the debate began. Tommy repeated his story, and gave us his own and Raupero's family history for the last twenty years. He also introduced Eboa's [?] wife, daughter of the celebrated Te Pahi, who was in England. She spoke to the same effect and in a pleasing manner. They afterwards called upon me; and I told them of Raupero's knowledge of the sale and of his messages, and that I should be glad to buy another fine place and to bring as many white people into the strait as would give all the natives employment. They said “very well”; but we want the payment for Port Nicholson”. This was another affair in my opinion, and I again referred them to Warepori, and recommended them to make haste in going over to take it, otherwise all the tobacco would be expended and nothing would be left for them but the ball-cartridges. This banter had the effect of putting an end to the discussion. The old men were silent; and the young Chiefs eyed each other as if judging how each was disposed for the adventure.

From Cloudy Bay the *Tory* sailed round to Te Awa-iti in Queen Charlotte Sound looking for Barrett, who had acted as interpreter at the Port Nicholson purchase. Barrett's wife was ill, and for that reason he was unable to accompany Wakefield on his next excursion, to visit Te Rauperaha (‘Raupero’) and the other chiefs of the ‘Kafia’ tribe. When writing to his superiors in England, Wakefield explains the purpose of his visit as not to separately buy additional land from Ngati Toa, but rather to eliminate their opposition to the *Port Nicholson* purchase, which Nohorua and others of Ngati Toa had complained of at Port Underwood and Cloudy Bay. In his third report written at Te Awaiti on 13th October Wakefield has this to say:²⁵⁰

²⁴⁹ Wakefield, entry for 8 October 1839, Memorandum to NZ Company, NZC 3/1, National Archives, Wellington.

²⁵⁰ Wakefield, Duplicate of Report No. 3, 13th October 1839, NZC 3/1, Archives New Zealand, Wellington.

This visit, besides entering into my original plan, according to the suggestion contained in my instructions, is necessary for the ratification of the purchase of Port Nicholson; that no further question shall arise as to the Company's right to that territory and to put an end to the opposition experienced from the subordinate Kafia Chiefs in all parts of Cook's Strait.

The *Tory* was at Kapiti on October 16 and Colonel Wakefield met with Te Rauparaha. At this time intense fighting was in place on the Kapiti coast and some members of the ship's company assisted with the wounded. As well as meeting Te Rauparaha those on board the *Tory* also met Te Hiko of Ngati Toa. The actual "transaction" took place on October 21.

Commissioner Spain, appointed by the British government to inquire into the New Zealand Company's claims to land in the Cook Strait region, later heard detailed evidence on the Kapiti deed in June 1842 and in April 1843. Wakefield was examined on 9 June 1842 before Spain by Dr Evans "on the part of the New Zealand Company". After reading out the deed, which purported to cede a vast tract of land - in fact all the land west of a line running from Mokau (Nth. Taranaki) to Pt Tehakakare on the Wairarapa Coast and north of the 43rd parallel in the South Island, perhaps 20-30% of the entire country - and describing the consideration (the usual array of guns, clothes, iron pots, knives, etc.), Wakefield went on to describe what had transpired in October 1839.²⁵¹

I went to Kapiti some time in October 1839 in the *Tory* for the purpose of treating on the part of the New Zealand Company with the Chiefs of the Kawia Tribes for the purchase of their Lands; at several interviews with Rauparaha, and Hiko who were the acknowledged principal Chiefs of the Kawia Tribe they described to me the properties of the tribe in Cooks Straits; they stated that they had come many years since with Tepahi from Kawia and Mokao and taken possession by conquest, and the extermination of the ancient Tribes of both sides of Cooks Straits within the boundaries named in the deed; after repeated conversations examination of the plan produced which was attached to the Deed they consented to sell me all their possessions with the understanding that a tenth portion of the land produced was to be reserved for the use and benefit of the Native Chiefs and their families; some hesitation seemed to exist on the part of Hiko, which seemed caused by jealousy of Rauparaha. This led to a considerable delay in the completion of the transaction.

During this time the ship was constantly crowded with Natives - who talked over the affair, and repeatedly described the places owned by them: at last it was decided that they should all come on board on a particular day to receive the payments which had already been fixed upon, and to sign the Deed; they accordingly mustered on board to the number of about one hundred (some time in October) and the distribution of goods was about to begin when

²⁵¹ Evidence of William Wakefield, 9 June 1842, OLC 1/907 (Case 374a), NA, Wellington,

Rauparaha and Tunia [i.e. Tungia] seized upon the double-barrelled guns and seemed determined to make a scramble for the rest of the goods, upon this Hiko who was in the act of putting on some of the Cloaths which had been given him as a present, threw them off and calling his boatmen left the ship with his uncle Rangihiroa, in anger at Rauparaha's proceedings; I declined proceeding further in the transaction at that time, notwithstanding the earnest entreaties and finally the threats of Rauparaha, and the rest of the Natives on board; I finally had all the goods repacked and put below, and sent all the Natives on shore.

The next day I had an interview with Hiko who told me that he was not unwilling to sell his land but that he was afraid that Rauparaha and his people would seize upon all the payments. Upon my assuring him that such should not be the case, he went on board with me accompanied by Rauparaha. In the cabin of the *Tory* they went over again the map produced, and enumerated the places possessed or claimed by them, they excepted of their own act the islands of Kapiti or Mana as places where they or some of this tribe resided; and which had been the subjects of previous bargains with the white people, they assured me that they had never parted with any other portion of their lands and that the principal parts of them were entirely uninhabited, and they were not sorry to get rid of them, as they were of no use to them, and they did not know what use they could be to me; a Captain Lewis, an American, who had been residing some time at Hiko's Island, came off with him as his friend on the occasion, at my request Captain Lewis explained to Hiko and Rauparaha, the contents and nature of the deed. He told them that they were parting with all their Land, that they would never get it back again, and that they would never received any further payment than the one they were just going to receive - he also explained to them the nature of the reserves made for them. They both perfectly understood him, and consented to the deed.

Te Rauparaha was questioned by Spain and Clarke at Otaki on 26 April 1843.²⁵² Spain asked him to describe what happened at Kapiti when the *Tory* arrived there in October 1839. Te Rauparaha replied:

When the vessel was at Kapiti Colonel Wakefield sent for me, Tungia, and Te Rangihiroa, and he said to me, "Friend, to whom does Taitapu belong?" I said, "It belongs to me". He said, "Would not you consent for me to have it?" I answered, are you much in want of it. He said "I am". I asked "what payment". He said "I will pay you in pipes, tobacco, knives, scissors, spades, lead". Three casks of powder. One cask of tobacco. Ten iron pots. 2 cases of pipes. 2 cakes of soap. 3 double-barrelled guns. 10 muskets. 20 shirts. Some P. Jackets - and some trousers. Some pair of lead. Some iron pieces. Some beads. Some Jews harps. Some blankets - and other articles. This was for Taitapu alone; and I was dissatisfied with this payment, and I was [] to get more, but Col. Wakefield would not give me any more. He then told me to

²⁵²

OLC 1/907, NA Wellington.

collect Rangihaeata and others and he would make a request to purchase Wairau and it dropped at that time and I have never seen him since.

Spain asked Te Rauparaha to look at the deed "and tell the Court whether that is your signature - and if you signed it at that time?" Te Rauparaha:

It is, and I signed it at that time, and I was told that if I signed it my name would be showed to the Queen of England and I should be known as the great chief of New Zealand.

Spain questioned Te Rauparaha closely as to the contents of the deed.²⁵³

- Q: Was that deed read over to you and interpreted, and did you understand the contents?
- A: No-one interpreted it.
- Q: Do you recollect a person named John Brook being there and did he not act as interpreter on that occasion?
- A: Yes, he did, but we did not understand him.
- Q: Who made you understand what Land Col. Wakefield wanted to purchase?
- A: John Brook.
- Q: Did not John Brook explain the contents of the deed to you?
- A: He was there, but he did not interpret the deed to me.
- Q: At the time you signed the deed, did you understand that it purported to convey land to Col. Wakefield?
- A: No, I did not. Col. Wakefield said at the time, "Give me a small piece of ground equal to the property that I have given you."
- Q: Did you at the time of the sale state to Col. Wakefield the boundaries of the land you claimed?
- A: Yes. On the west coast of the Middle Island, from a little Creek called Te Wanganui up to a [] mountain which I agreed to sell to Col. Wakefield.
- Q: Did you agree to sell any other land to Col. Wakefield?
- A: No.

Spain questioned Te Rauparaha about the payment:

- Q: What became of the payment you mentioned that Col Wakefield offered you on board of the "Tory"?
- A: It was given to the Natives that were on board the vessel, Ngati Toas and Waikatos and any one that came.

²⁵³

Ibid.

Given the insistence of the chiefs that they had meant to sell only areas in the South Island, and the obvious problems with translations, Spain (as will be seen later in this report, where his decision will be fully analysed) disallowed the Company's claim for a grant at Porirua. However based in part on this evidence he did allow the Company to have a grant at Nelson (one reason why he did so was because he took Ngati Toa to have ceded "Taitapu" and "Whakatu").

After a comprehensive review of the evidence relating to the Kapiti deed Tony Walzl has concluded (and I agree with his analysis):

- that in 1839, Company officials who came to New Zealand with the object of acquiring the land for settlement in the top of the South Island, concluded a transaction with Ngati Toa chiefs at Kapiti and Te Atiawa resident in Queen Charlotte Sound which, from the European viewpoint, was understood to be a sale of land.
- That in reaching this viewpoint of the 1839 transaction, Company officials misinterpreted or ignored problems that arose during the negotiations which, if they had been considered or inquired into, may have revealed that a different perspective of the transaction existed from a Maori viewpoint.
- That evidence recorded from Maori involved in the 1839 negotiations reveals that, due to language difficulties and different cultural perspectives, they did not see that their participation in the transaction led in any way to an understanding that the land had been sold or that all the land claimed by the Company had been included in the transaction. Instead, available evidence suggests that their understanding conformed with traditional objectives of transferring land to encourage settlement with the expectation that a relationship be formed aimed at the creation of mutual benefits.
- In completing the transaction, Company officials did not take adequate steps to ensure that they negotiated with all of the correct rightholders. The Ngati Rarua rights which existed were not discussed.

The deed has also been analysed by Rosemary Tonk, who has concluded that Ngati Toa saw the Pakeha dealings with them not as an alienation but rather as a *recognition* of their interests in the lands referred to in the deed.²⁵⁴ In my view this is also very plausible, and this seems to exactly have been Nohorua's view as expressed to Wakefield at Port Underwood. He would have heard that a ship had turned up out of the blue and that a meeting had taken place at Port Nicholson at which interesting-sounding presents had been made to Te Puni and Te Wharepouri which seemingly recognised some kind of pre-eminence on their part. This naturally would have provoked Ngati Toa irritation.

²⁵⁴ Tonk, "Difficult and Complicated Question", 44.

4.4 “We should not proceed with the building”: Ngati Toa resistance to the construction of the Porirua road and to settlers at Porirua (1841-2)

The New Zealand Company settlers, no doubt advised by Colonel Wakefield, tended to act on the assumption that native title at Porirua, as elsewhere in the region, had been extinguished by the 1839-1840 deeds, the consideration for this extinguishment being the goods paid at the time of the deeds and the right to participate in the balloting of land under the ‘tenths’ scheme. This meant that surveying and allocation of sections at Porirua, Nelson and elsewhere could simply proceed. When Ngati Toa prevented the taking up of sections at Porirua this was regarded as an “outrage” which required action from the Crown. To Ngati Toa their title had never been extinguished, the New Zealand Company surveyors had no right to survey their lands, and the settlers had no right to occupy them. Attempts by settlers to occupy allocated sections at Porirua were firmly, although not violently, resisted. As far as the government was concerned, at this stage the inclination of the Crown was reasonably favourable to Ngati Toa’s view of things and unsympathetic to the settlers. Calls to take action against Ngati Toa were rejected. As a result of political changes and pressures in Britain, this attitude was later to change markedly.

Ngati Toa do not appear to have been troubled by Pakeha settlement around Wellington harbour itself. However it is clear that attempts by the New Zealand Company to survey sections and efforts by the government to construct a road to Porirua were certainly resisted by Ngati Toa. Ngati Toa blocked the construction of a road north from Wellington at Porirua in late 1841. In a despatch sent to the Colonial Secretary on 13 November Governor Hobson reported that “[t]he Natives of Kapiti, who claim the land at Parorua [sic], speak out more boldly [than Port Nicholson Maori], asserting that they will surrender their lands but with their lives; and they have already made a show of following up this determination, by interrupting the construction of a road through the disputed lands”.²⁵⁵ A focus of this opposition was the Porirua road, or track, now followed more or less by the route of State Highway 1 across the Wellington Peninsula from Porirua to Wellington City. New Zealand Company surveyors and work parties worked on the track to make it passable on horseback, completing this by 1841. Some of Ngati sabotaged the road by destroying some bridges and cutting trees across it, but generally the road seems to have remained open, more or less, and was frequently used by travellers passing up and down the coast – at least until Te Rangihaeata closed it in 1845 by placing a tapu on it.

²⁵⁵ Hobson to Colonial Secretary, 13 November 1841, GBPP 1842 (569) 171, cited Anderson, *Historical Overview of Wellington Region*, CCJWP report, n.d., 41. The Governor had emphasised to the Ngati Toa chiefs that the Crown had the right to build roads and that while he “supported the natives in their just rights, [he] would as firmly maintain those of Her Majesty”. Road building was a “measure...intended alike for the benefit of the native and European population” (ibid).

In June 1841 126 rural sections in the Porirua area were allocated to settlers. Wakefield issued licences to four settlers to clear and build houses on these sections.²⁵⁶ As at Wellington the sections had been surveyed out with breathtaking disregard for Maori homes, villages, and cultivations – or even the location of homes and commercial operations belonging to Europeans, such as the whaling station at Paremata. Taupo pa at Plimmerton was simply wholly included within one of the 100 acre country sections. The sheer impracticality of this was one reason why some of the country sections were abandoned by Grey at the time of the making of the Porirua purchase in 1847. In early 1842 some settlers tried to build some houses on Section 57 near Porirua harbour. Te Rangihaeata told them that the land had not been purchased by Wakefield and that the Pakeha settlers had to stay at Port Nicholson. The houses were dismantled, the wood tied up in bundles, and all the settlers' property returned to them. The settlers involved, (Hurley, Parry, Lowndes and Torr) complained to Wakefield about Te Rangihaeata's "riotous" proceedings.²⁵⁷

On Tuesday, March 22d, we, in company with Mr Park, the surveyor, took possession of the land we had engaged, and next day commenced building four houses upon the section marked No. 57 on the surveyor-general's plan. We proceeded with our building until Saturday, April 2d, when a body of Teti [? – Titahi?] natives, about 30 in number, came and drove us off, and told us we should not proceed with the building until they had been paid for the land.

Hurley and the others went into Port Nicholson and complained about Ngati Toa's actions to the New Zealand Company officials, who in turn raised the matter with Murphy, the police magistrate. Murphy sent a constable out to Porirua, and on April 6th the settlers returned to Porirua and carried on with their construction work. On April 13th Te Rangihaeata himself turned up, with a group of supporters, "armed with guns, horse-pistols and tomahawks". There was an argument, but Te Rangihaeata would not compromise, and instead "commenced the work of destruction" and "cut the whole of the buildings to the ground".²⁵⁸ Hurley and co. claimed expenses of £53. 10 for their loss, this mostly being made up of "four weeks labour for four mechanics". According to George Clarke jr., however, (sub-Protector at Port Nicholson) "everything was done with caution and system, and the whole was given to

²⁵⁶ The recklessness of Wakefield's decision has been commented on by Patricia Burns: see Burns, *Fatal Success*, 224:

Because Te Whanganui a Tara was an area in which its inhabitants had lived for a comparatively short period, and because William Wakefield had been able to push many of the bewildered families off their land, he did not pause to ask if this pattern could be repeated everywhere. His recklessness was especially culpable when considered against his having deliberately chosen the site because of the people's lack of experience of Europeans. While he balked at the prospect of removing the well-armed Ngati Toa from their Porirua homes and farms, he still allowed innocent settlers to be sent there.

²⁵⁷ This report is reprinted in the Appendix to the Report from the Select Committee on New Zealand, *British Parliamentary Papers*, IUP (NZ), vol 2, 108.

²⁵⁸ Ibid.

the owners, except one hatchet, which after a strict search could not be found, and for which ...Rangiaiaata offered immediate payment”. Hurley also attempted to establish a sawmill at Porirua, but was evicted from that as well. Ngati Toa were certainly not willing to tolerate indiscriminate forest clearance at Porirua. Nevertheless there was some settlement at Porirua all the same. Maybe those who made an effort to get along well with the Maori community were left unmolested. By 1844, according to one source, part of the land at the southern end of the road had been cleared and twelve farms were occupied, with about 42 hectares under crops.²⁵⁹

The New Zealand Company also planned to build a village at Motukaraka Point, on the north side of Pauatahanui Harbour. Robert Park laid this out in 1841, and Wellington Survey Office Plan 10413 is of a ‘Map of the Village of Porirua’ and Motukaraka Point.²⁶⁰ The village was surrounded by 100-acre country sections which went all around the perimeter of the harbour and which also ran up the Horokiwi Valley. Nothing seems to have come of the planned village, and in 1845 Te Rangihaeata established a temporary pa there himself. The site turned out to be unsatisfactory from a defensive point of view as it could be bombarded by naval vessels, and for this reason Te Rangihaeata was to move to Pauatahanui where he built another pa called Mataitaua (‘the lookout of the war party’).

Destruction of settler homes and sporadic efforts to block the road caused irritation amongst the settler community at Port Nicholson, but pressures by the colonists at Port Nicholson to take action against Ngati Toa were rejected by Crown officials. Wakefield wrote to the Court of Directors in London, complaining about this “late outrage by Rangiaiaata, a chieftain of the Mana and Porerua”, and advised the Directors of his plans to make application to the government to “put purchasers of the land from the Company in possession”.²⁶¹ But of course the Company had at this stage no title to the land at Porirua at all. On this occasion the Company received no support from the Government. According to Robyn Anderson:²⁶²

According to the Company and its settlers, Te Rangihaeata’s actions derived not from a genuine disavowment of sale but from his wish for further payment. In their view, the alleged natural greed of the Maori had been exacerbated by actions of the government. In particular, the Spain Commission, by throwing doubt on the fairness of the purchase, gave the Maori “a fine opportunity” to say that it was not, “and of course they began directly to say that they had

²⁵⁹ Kelvin Day, *The Old Porirua Road*, Porirua Museum, Porirua City Council, 1991, 7.

²⁶⁰ There is a reproduction of this Plan in Mark Sheehan, *Pauatahanui and the Inlet*, Porirua Museum, Porirua, 1988, 5.

²⁶¹ W Wakefield to Court of Directors, 28 April 1842, Appendix to the Report from the Select Committee on New Zealand, *British Parliamentary Papers*, IUP (NZ), vol 2, 108

²⁶² Anderson, *Historical Overview of Wellington Region*, CCJWP report, n.d., 42.

not received payment enough and tried to make out the case as a bad one” [Minutes of Evidence before Select Committee on New Zealand, *GBPP* vol. 2, 1844, p. 178]. At this stage, however, officials refused to act on settler and Company demands for protection from further “native outrages”. Calls for the punishment of Te Rangihaeata and his people for their interference in attempts to build upon the land, take timber and exercise other rights of ownership were also rejected by the chief magistrate backed by both R.D. Hanson (the Crown Prosecutor), and Hobson who was of the opinion “that unless the land forming the subject of dissension can prove to have been alienated, the law would not justify” any action. This inaction was criticised by the Company and settlers as cowardly pandering to the powerful Ngati Toa – an attitude that was exacerbated the following year by the Wairau incident. The Colonial Office, however, continued to resist military means of intervention until 1845.

By 1847, however, when the Crown purchased a large area at Porirua principally in order to put Company settlers onto their sections, policy had very definitely changed.

4.5 “One undeviating system of opposition”: The Land Claims Commission

The New Zealand Company’s land claims were soon criticised from all directions. First to react were the CMS (Anglican) missionaries in New Zealand itself. William Williams reported scathingly at the end of 1839:²⁶³

It appears that the agents of the Company have in a certain way bought land to a very great extent. They profess to have purchased the whole from 40th degree to the 43rd. But the natives have no idea of what they have done. They were captivated like little children with a few Red Blankets & Double barrelled fowling pieces & have signed documents without being conscious that they were alienating the land.

This began a long period of ill-feeling, sometimes active hostility, between the CMS and the New Zealand Company. George Clarke jr., from a missionary background, who was to become Native Protector at Wellington, had little time for Wakefield and his supporters at Port Nicholson, and they for him. In 1841 George Clarke sr, Chief Protector, described in a letter to Dandeson Coates of the CMS that the Company’s land claims were a “an iniquitous and barefaced effrontery”.²⁶⁴

I cannot find words to express...both on behalf of the Natives and the English public who allow themselves to be thus gulled, the glaring falsehood and injustice of the assertion.

²⁶³ William Williams (Paihia) to CMS Secretaries, CN/08, 31 December 1839, cited Loveridge, *Object of First Importance*, 91.

²⁶⁴ Clarke to Coates, 9 June 1841, CO 209/17, 317b-319a, cited Loveridge, *Object of First Importance*, 92.

To counter the attacks from the CMS the Company raised as a smokescreen the issue of missionary land purchases, although in fact many of the latter were made in trust in order to protect Maori lands from speculators.

Partly in response to such concerns the British government decided to send a Land Claims Commissioner to New Zealand. As far as the British government was concerned there was just one Land Claims Commissioner, Commissioner Spain. However matters were complicated by the decision of the New South Wales government to also set up a land claims commission, and the New South Wales ordinance (Land Claimants' Ordinance 1840) was soon replaced by a New Zealand equivalent (enacted on 9 June 1841²⁶⁵). The jurisdictional differences between Spain and the commissioners appointed under the New South Wales/New Zealand ordinances (Commissioners Godfrey and Richmond) have been clearly analysed by Alexander Mackay:²⁶⁶

In fulfilment of the intention of the Imperial Government to send out a Commissioner with independent authority to investigate the claims of the New Zealand Company, Mr William Spain was appointed by a warrant under the Sign Manual, dated 20th January, 1841, and sent expressly from England armed with the full powers of the Crown itself for investigating titles and determining titles and claims to land in New Zealand. Whereas the Commissioners appointed under the Local Ordinance having no such authority could only make recommendations to the Governor subject to the rules prescribed by the aforesaid ordinance, which rules the Governor was not bound to adopt.

Spain took some time getting to New Zealand (he was shipwrecked on the way). Once he got to New Zealand he was appointed under the local New Zealand Land Claims Ordinance as a commissioner (22nd February 1842) but presumably he still retained his autonomous high-level authority from the British government. In New Zealand a division of labour was worked out whereby Spain dealt with the New Zealand Company transactions and Commissioners Godfrey and Richmond with most of the other “old land claims”.²⁶⁷ (Spain did not, it must be emphasised, inquire into *only* the New Zealand Company Claims: he also dealt with claims by other claimants to lands in the Cook Strait region, such as the Thoms claims at Kapiti and elsewhere.) Under the New South Wales and New Zealand ordinances successful claimants were entitled to no more than 2560 acres (four square miles), which governed the

²⁶⁵ Land Claims Ordinance 1841 (NZ) (9 June). The wording of the New Zealand Ordinance is more or less the same as Governor Gipps' New South Wales ordinance of the preceding year. Section 2 of the New Zealand ordinance states that “the sole and absolute right of pre-emption from the aboriginal inhabitants vests in and can only be exercised by Her Majesty”.

²⁶⁶ Mackay, Memorandum on the Native Reserves set aside by the New Zealand Company, 1873 AJHR G-2B, 4, 7.

²⁶⁷ See generally Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, 1997, 122-134.

investigations of Richmond and Godfrey – leading, of course, to the ‘surplus lands’ issue of such significance in the Muriwhenua (Wai 45) Inquiry. However the Spain inquiries into the New Zealand Company transactions were not based on this concept, but rather on that of whether the Company was entitled to a grant at the various places it chose to make a claim (Port Nicholson, New Plymouth, Nelson and so on), up to the ceiling of the agreed acreages as fixed by Pennington.

Spain’s formal instructions came from Governor Hobson.²⁶⁸ In my view the Tribunal’s analysis should simply be adopted. In the Tribunal’s view:²⁶⁹

In March 1842, following the passage of the Land Claims Amendment Ordinance 1842 (later disallowed), Spain received Hobson’s instructions for his inquiry into the claims of the New Zealand Company...Hobson’s instructions expressly required Spain to hear and report on the New Zealand Company’s claims under the provisions of the Land Claims Amendment Ordinance 1842. He was:

- to be guided ‘by the real justice and good conscience of the case without regard for legal solemnities’;
- to ensure that a protector of aborigines was present at all hearings, his duty being to represent the rights of Maori and protect their interests and to act for them in the conduct of their cases; and
- not to recommend the grant to any claimant of land of more land than four acres for every pound sterling expended in the manner referred to in the ordinance, ‘nor any more than the contents of the purchase made’ from Maori, irrespective of the amount paid for the land, ‘with the exception of the New Zealand Company, who hold Blocks of Land under their charter from the Crown’.

Commissioner Spain, appointed by the Colonial Office as Land Claims Commissioner in New Zealand, was assigned responsibility for New Zealand Company purchases by Governor Hobson. Colonial William Wakefield, under the impression that the New Zealand Company had a guaranteed title to the acreages calculated by Pennington, was at first untroubled by Spain’s investigations. This soon changed once it became clear that Spain intended to fully inquire into whether the Company was entitled to receive a Crown grant at any of the places it had claimed. Spain’s careful mode of proceeding, and his meticulous taking of Maori evidence, came as an unpleasant surprise to William Wakefield, or at least so he said. On 30 May 1842 Spain wrote to the Directors of the Company in England that “I certainly had no conception that any tedious proceedings were contemplated,

²⁶⁸ Shortland to Spain, 26 March 1842. See Waitangi Tribunal, *Te Whanganui a Tara*, 101-2.

²⁶⁹ Ibid.

or that a searching inquiry, managed with all the niceties of law and evidence, was to take place”.²⁷⁰ When Wakefield reported developments at Port Nicholson to London, the Company’s Governor, Joseph Somes, sent an indignant protest to the Colonial Secretary (now Lord Stanley, in Sir Robert Peel’s Tory government).²⁷¹ However the investigations nevertheless proceeded.

Wakefield did his best to not cooperate with Spain’s Court. He did this by simply not turning up at hearings, failed to call evidence, and generally did all he could to get across the message that he considered the hearings to be pointless and a waste of time. This did nothing to improve relations with Commissioner Spain. Having agreed to attend a hearing at Wanganui, Wakefield did not arrive, leaving Clarke and Spain fuming. At the hearings at Porirua, at which Te Rauparaha and Te Rangihaeata gave evidence, Wakefield again made no appearance and took no steps to advance the Company’s case. “On my arrival”. Spain complained, “I found neither Colonel Wakefield nor any other agent of the Company, and although Porirua is only 18 miles from Wellington, and I remained there for a fortnight, of which Colonel Wakefield was perfectly aware, he never came near the place”.²⁷² The Principal Agent had, said Spain, “pursued one undeviating system of opposition and annoyance”.

Spain began his inquiries as full investigations, and with the assistance of George Clarke jr. a large volume of testimony was taken in the early part of 1842, despite the absence of New Zealand Company cooperation. Towards the end of the year Spain changed his method of proceeding to an arbitration, which involved the recording of much less evidence and an increased dependence on Clarke to represent Maori interests.

4.6 Consequences of the Wairau

In April 1843 Captain Arthur Wakefield at Nelson decided to proceed with a full survey of the Wairau plains.²⁷³ Wakefield, taking the same view of matters as his brother, regarded the Maori title to the Wairau area as extinguished on the basis of the 1839 deed, still of course at that time under consideration by Commissioner Spain. Why he decided to proceed with a survey before Spain had completed his enquiries and in the face of Maori opposition is on the face of it difficult to understand. However, the Company was taking the stance that it was

²⁷⁰ Spain to Secretary, New Zealand Company, 30 May 1843, NZC 3/2, p. 323, cited Burns, *Fatal Success*, 214.

²⁷¹ Somes to Stanley, 24 October 1842, *Documents Appended to the Twelfth Report of the New Zealand Company*, (1844), E.21 pp 35-38E.

²⁷² Spain, First Report, 12 September 1843, GBPP (IUP) NZ, vol 2, 291, cited Burns, *Fatal Success*, 225.

²⁷³ A.D. McIntosh, *Marlborough: A Provincial History*, 72.

perfectly entitled to select land at the Wairau (or anywhere else within the land theoretically extinguished by the 1839 deeds) if it so wished. Wakefield certainly knew that the survey was likely to attract Maori opposition but this does not seem to have troubled him in the least, which can only be attributed to a dangerous miscalculation of Ngati Toa's will and ability to resist the Company's pretensions. It is perhaps possible that Wakefield intended to provoke Ngati Toa resistance in order to give the Nelson magistrates an opportunity to coerce the Ngati Toa leadership by arresting them, but whether Arthur Wakefield was quite that devious is unlikely (although William Wakefield certainly was). In proceeding with the survey, however, the Company was throwing down a challenge not only to Ngati Toa but also to Commissioner Spain and to the government. Arthur Wakefield and the Police Magistrate at Nelson (Thompson) were more likely to have been interested in testing the reactions of the government and Commissioner Spain and to have seen the possibility of Maori resistance as a secondary issue. This decision was to lead inexorably to the drama and tragedy of 17 June 1843.

The main events leading up to the 'Battle' of the Wairau were covered in detail in my report on *Ngati Toa and the Northern South Island*.²⁷⁴ The full story need not be gone over again in detail in this report.²⁷⁵ This battle, or engagement, "was the first battle between Maori and emigrants"²⁷⁶ and spread shock waves across the country, shock waves which spread to Governor Gipps in New South Wales and ultimately to the British government and in the

²⁷⁴ See R P Boast, *Ngati Toa and the Upper South Island*, A report to the Waitangi Tribunal, March 2000, Wai 785 Doc #A56, 79-177. See also John Miller, *Early Victorian New Zealand*, Oxford University Press, 1958, 70-96; Ruth Allan, *Nelson: A history of early settlement*, A H Reed, Wellington, 1965, 241-308. At the time of completing this report (August 2007) the Waitangi Tribunal's main report on the Te Tau Ihu Inquiry (Wai 785) had not yet been released.

²⁷⁵ The precise chronology of events leading up to the 'battle' was as follows:

April 15 (1843)	Wakefield arranges contracts for the Wairau surveys;
April 22	Survey parties led by Cotterell etc. arrive at Cloudy Bay.
May 12	Te Rauparaha and Te Rangihaeata raise the issue with Spain.
May 13	Spain advises that he cannot go to Wairau immediately.
May 23	Spain recommences his enquiry into the Wellington grant.
May 28	Te Rauparaha and Te Rangihaeata cross Cook Strait.
May 29	Ngati Toa go ashore at Cloudy Bay.
June 1	Te Rauparaha and about 100 followers arrive at the Wairau.
June 2	The chiefs find Cotterell, burn his hut etc and escort him away.
June 3	The chiefs find Barnicoat; Tuckett arrives from Nelson.
June 4	Barnicoat's hut burned etc; Ngati Toa find Parkinson.
June 5	The chiefs learn of Tuckett's arrival.
June 6	Barnicoat is taken to the Wairau river mouth.
June 7	Parkinson, Tuckett and the chiefs come back downriver.
June 11	Cotterell reaches Nelson; Tuckett leaves Wairau.
June 12	Ngati Toa go upriver; warrants issued in Nelson.
June 13	The <i>Victoria</i> leaves Nelson.
June 15	Nelson expedition lands at the Wairau.
June 16	The expedition goes upriver and encounters Rawiri Puaha.
June 17	'Battle' of the Wairau.

²⁷⁶ Burns, *Fatal Success*, 234.

House of Commons. At Nelson the news of the Wairau disaster caused, as might be expected, consternation and grief. As Edmund Bohan has put it (in his biography of Stafford, himself a prominent Nelsonian) “the effect [of the Wairau] on this small, insecure and trouble-wracked community, perched on the tip of a still largely unexplored South Island, was traumatic”.²⁷⁷

The Wairau affair had led to the deaths of most of the leading citizens of the town and indeed resulted in a substantial number of widows: Constantine Dillon, a Nelson settler, calculated that of the 22 people killed, “12 had wives and families”.²⁷⁸ Nelsonians were devastated by the embarrassing fact that so many Englishmen had been so easily wiped out by “a party of natives”. Once he had heard all the details a Nelson settler named Saxton was inclined to blame the leaders of the Nelson settlement for the disaster:

I was ashamed and astounded to hear that it was the result of the most culpable neglect and mismanagement and effected by a party of natives not more than 80 or 100 including women and children against about forty on our side.

Some settlers condemned those Englishmen who had fled at the Wairau for “cowardice”, a very harsh judgment in the circumstances.²⁷⁹ Some Nelsonians, at least, also believed that Ngati Toa had been supported by wicked Europeans who merited punishment as much as Te Rauparaha and Te Rangihaeata. Constantine Dillon wrote to his sister:²⁸⁰

As for ourselves we feel no fear from the Maoris, for they would never hurt any man who did not attack them. At the same time we think that the two chiefs should be taken and punished, as well some whalers, who I think were as bad as they, if not worse, for I believe they instigated the Maoris into it.

Dillon must have been thinking of Joseph Thoms, who as owner of the schooner *The Three Brothers* had transported the chiefs and their people from Porirua and Mana to Cloudy Bay. When the Nelson magistrates began collecting evidence in order to indict the chiefs for

²⁷⁷ Edmund Bohan, *Edward Stafford: New Zealand's First Statesman*. Hazard Press, Christchurch, 1994, at 21.

²⁷⁸ Constantine Dillon to his sister (Margaret Hamilton), 7 August 1843, in Sharp (ed), *Dillon Letters*, 23.

²⁷⁹ Constantine Dillon to his sister (Margaret Hamilton), 7 August 1843, in Sharp (ed), *Dillon Letters*, 21: “Our people then began to fire and some to run away in a most cowardly manner, firing at the same time at random. In vain all our people amongst the gentlemen waved white handkerchiefs and called out peace. Our cowardly blackguards of white people continued firing and running away till only a few of the gentlemen were left, who kept together and surrendered.”

²⁸⁰ Ibid.

murder they also recorded as much evidence as they could against Thoms. William Wakefield largely blamed Thoms for the affair in his report to the Court of Directors in June.²⁸¹

The settlers at Wellington were no less alarmed than those at Nelson. Barnicoat, a New Zealand Company surveyor, who, like Frederick Tuckett, had had a lucky escape at the Wairau, recorded on 29 June that the people at Wellington were “in a state of alarm and excitement”.²⁸² The town was divided into districts “in each of which volunteers are enrolled who are drilled and trained to the use of arms twice a day”. The settlers had also erected a battery “mounting two large and two smaller guns”.

As well as asking the colonial government at Auckland for protection, the Wellington and Nelson settlers also turned to Governor Gipps at Sydney and asked him to send troops from New South Wales to protect them. Gipps first learned of the Wairau affair on 13 June. As he had received no official request from the New Zealand government for troops he felt unable to intervene, but he did write to Lieutenant-Governor La Trobe at Port Phillip (Melbourne) asking him to mention the matter to Sir Everard Home, commander of HMS *North Star* which had arrived at Melbourne from China on 22 June. (Sir Everard, now the senior Naval officer in Australian and New Zealand waters, played an important role in the aftermath of the Wairau over the ensuing months). Gipps wrote.²⁸³

Should [the *North Star*] be still at Port Phillip when you receive this, perhaps you would take an opportunity of mentioning to Sir Everard Home that the settlers at Nelson in New Zealand have had some serious affrays with the natives - and that application has consequently been made to me for Troops, which however I doubt I can comply with - Several lives have been lost on both sides & the Settlers both at Port Nicholson & Nelson are in a state of consternation. The presence of a Vessel of War would of course be most acceptable to them - & restore confidence sooner than the presence even of Troops - I have however had no application for Troops *from the Governor of New Zealand* - and therefore can scarcely interfere in the matter officially.

Gipps later decided to send some troops to New Zealand after all, in the hope, however, that it would not be necessary to use them and leaving this to Home’s discretion. After sailing from Port Phillip to Sydney the *North Star* left for New Zealand on 1 August,

²⁸¹ W. Wakefield to Ward (Sec. NZ Co, London), 28 June 1843, CO 208, Reel 593, pp 96-103, CFRT Te Tau Ihu DB 82-96.

²⁸² Barnicoat diary, qMS-0139, ATL, entry for 29 June 1843

²⁸³ Gipps to La Trobe, 1 July 1843, in A.G.L. Shaw (ed), *Gipps-La Trobe Correspondence 1839-1846*, Melbourne University Press, 1989.

with 53 men from the 80th regiment,²⁸⁴ and arrived at Port Nicholson on 31 August, remaining in New Zealand waters for some months.

Commissioner Spain, in his long first report sent on 12 September 1843, thought that in some respects the Wairau affair arose from the New Zealand Company's intransigence over titles to land – its insistence on the point that it already extinguished native title and was able to proceed with surveys basically wherever it wanted.²⁸⁵

I have given the whole subject my best and most attentive consideration, and I have arrived at the conclusion that the agents of the Company in forcing a survey of the Wairau, can only be regarded as an attempt to set British law at defiance, and to obtain possession of a tract of land, the title of which was disputed, and at the very time under the consideration of a Commissioner specially appointed to report upon it.

The Wairau affair also raised some very basic questions of legality and government, in the sense that the tragedy reflected confusions and mistaken assumptions about the enforcement of the law. Shortly before the battle, in early 1843 Te Rauparaha and Te Rangihaeata, chiefs of Ngati Toa, had personally halted the New Zealand Company surveys of the Wairau Valley. The way in which this was done was very similar to the equivalent actions taken at Porirua by Te Rangihaeata in April 1842 which have already been described. Ngati Toa were careful to avoid harming the surveyors or damaging their property. However, in a seemingly insignificant but in fact symbolically highly-charged action Ngati Toa burned down a small hut made by the surveyors out of grasses and reeds gathered from the land. The response of the authorities at Nelson was to issue a warrant for the arrest of the chiefs for arson. Partly this reflected a Lockean theory of property: the Wairau was believed to be empty or at least disputed land and the hut, made by the surveyors from their own labour, was their property.²⁸⁶ The Wairau issue was not a 'battle' over land, and indeed was not really about land, at least not directly: it was to do with the application of criminal law. The Nelson Justices of the Peace believed, or claimed to believe, that they had the same powers that J.P.s did in England, where to a large extent they controlled most stages of the criminal justice process until trial.²⁸⁷ In accordance with time-honoured English practice, an information had

²⁸⁴ Shaw, *op.cit.*, 222. Gipps hoped however that the men would not have to be landed and could be returned to New South Wales: Gipps to Stanley, 3 August 1843, *HRA*, xxiii, 72

²⁸⁵ See Spain's Preliminary Report, 12 September 1843, *Appendix to Report from Select Committee on New Zealand*, BPP 1844, 291-301, at 301.

²⁸⁶ On Locke and British imperial theory see Anthony Pagden, "The struggle for legitimacy and the image of the Empire in the Atlantic", in Nicholas Canny (ed), *Oxford History of the British Empire*, vol 1, 1999, 34-54.

²⁸⁷ On the role of the J Ps in the English criminal justice system see Douglas Hay, "Property, Authority and the Criminal Law", in Douglas Hay, Peter Linebaugh, John Rule, E P Thompson and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Harmondsworth,

been sworn against Te Rauparaha, and a party of magistrates and special constables was assembled, exactly as they would have been in England, to take the supposed malefactors into custody. Ngati Toa, of course, refused to accept the role in the theatre of justice that had been planned for them. They had legal ideas of their own, one of which was their undoubted right to all products of the soil. Under a Lockean, labour-based theory of property, the reed hut was the property of the surveyors; to Ngati Toa it was theirs and the Nelsonians' claims to arrest them for burning their own belongings was simply absurd. The chiefs resisted arrest; by some means or other a shot went off; and Ngati Toa easily routed the armed posse of Nelson settlers. A group of survivors were massacred after the battle by Te Rangihaeata as utu for his wife, shot dead during the affray. In the end it was Maori law which was enforced on the Pakeha, rather than the other way round.

After the Wairau, the Nelson magistrates, or at least those of them who had survived, conducted their own independent investigation into the Wairau and then drew up warrants of arrest of Te Rauparaha and Te Rangihaeata for murder. When Sir Everard Home and Major Richmond sailed into Nelson Haven on 12 October 1843 Home was astonished to be handed the warrants. Home declined to execute them, and indeed regarded the efforts of the New Zealand Company magistrates to order him about as nothing less than a joke, but the significance of this is that it shows once again the very large powers claimed by the J.P.s. They assumed, or pretended, that they had exactly the same powers as Justices of the Peace in England and were claiming that in fact the Crown's military forces were under their direction. Home did not think so.

Underpinning the collision at the Wairau, then, was a very serious legal problem. It was, in a sense, a legal problem relating to both substantive criminal law (was the burning of the huts really "arson"?) and criminal procedure and constitutional law (what were the powers of the Justices – could they claim jurisdictional powers over Maori and order military officers to do their bidding?) The settler magistrates were claiming nothing less than a complete right of criminal jurisdiction over Maori. Under English criminal law as it operated at that time, JPs issued arrest warrants, received informations (prosecutions) and controlled the bail system and the control of offenders in cases of felony – such as arson – until trial, which would not be by them but by one of the judges. They were of course forgetting that they were no longer in England but lived in a Crown colony where the constitutional and legal norms were different - but where too the extent of difference was unclear and contestable. Governor Fitzroy, who arrived in the colony at the end of 1843, could certainly see that if unchecked the

1975; Peter King, "Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800, *Historical Journal*, vol. 27 (1984); J H Langbein, "The Criminal Trial Before the Lawyers", *University of Chicago Law Review*, vol. 50, (1983), 1-135.

civilian magistrates' views could all too easily amount to a mere manipulation of the forms of criminal procedure as a means of exerting power and intimidating Maori, at the risk of a major confrontation. However he also told Maori at Waikanae at the February 1844 hui that "had you been Pakehas, you would have known that it was wrong to resist a magistrate, under any circumstances; but not understanding English law, your case was different".²⁸⁸ It is probably the case that the legal position in a British colony such as New Zealand was simply not clear. Fitzroy's eventual solution was the Native Exemption Ordinance (16 July 1844) which deprived the Police Magistrates of power to order the arrest of Maori outside the towns, thus prohibiting the type of process used by the Nelson magistrates in mid-1843.²⁸⁹ After meeting the chiefs at Waikanae in 1844, as will be seen, Fitzroy informed them that the settlers had been in the wrong and that the government intended to take no action against them.

The Wairau had a number of social, demographic, and political consequences and these do need to be traversed briefly as well. Firstly, following the Wairau the thriving Ngati Toa community at Cloudy Bay broke up and the people fled to the North Island. The Reverend Ironside, who was the Wesleyan missionary at Port Underwood, noted the departure of nearly all of his parishioners (who were principally Ngati Toa). By June 24 (he noted) "the natives have gone away from here afraid of the Europeans, taking with them ammunition and all their property".²⁹⁰ Reverend Ironside, a compassionate and thoughtful man, as his journals and diaries plainly reveal, was deeply saddened by the drift of events. On July 2nd he noted that "this Sabbath and the last are very unlike those it has been my pleasure to spend in times past".²⁹¹ There were only 9 or 10 Maori to address, and the Pakeha whalers did not bother going to church. Ironside learned that the authorities at Wellington had no plans to take any immediate action and planned "to leave the settlement of this unhappy affair entirely to Government and they wish to assure the natives of their pacific intentions".²⁹² Ironside went looking for his parishioners, who must have been largely Ngati Toa, to try to persuade them to stay. He found them hiding in a secluded area in Queen Charlotte Sound where they were waiting for "people from the Pelorus River and D'Urville Island" (referring presumably to Ngati Toa at the Pelorus and their Ngati Koata kin on Rangitoto). All intended "crossing the straits and joining Te Rauparaha": "they are fully determined to defend their

²⁸⁸ Minutes of the Proceedings at Waikanae, 12 Feb 1844.

²⁸⁹ Wake's view is that while the Native Exemption Ordinance was "a poor substitute for Clarke's Native Court scheme" it least "had the merit of recognizing the fact that the government had no independent authority away from the settlements".

²⁹⁰ Ironside Journal, MS 3817/2, Alexander Turnbull Library, entry for 24 June 1843.

²⁹¹ Ibid, entry for 2 July.

²⁹² Ibid, entry for 8 July.

chief even to the death”.²⁹³ Ironside begged them all to stay, but it was no use. With the loss of his parishioners Ironside could see no point in remaining at Port Underwood and on 29 July he and his wife Sarah moved to Port Nicholson where the couple remained for the next six years. Ironside was able however to remain in contact with the Ngati Toa chief Rawiri Puaha, who had brought his people from Port Underwood and Cloudy Bay to Plimmerton.

Not, perhaps, until the Wairau did it become clear that Maori could not be overawed and intimidated by a mere show of force by settlers. Certainly the experiment of attempting to coerce Maori in this way was not tried again. Probably the significance of the occasion has never been better put than by Ian Wards:²⁹⁴

This brief, inglorious encounter, conducted on the one side with a calamitous lack of comprehension of the issues at stake, of adequate preparation and of any semblance of dignity, on the other with firmness, strict accord to custom and, the final affront, success, brought about the first rush to arms, the first wave of fear, and perhaps the first demonstration to the colonists that arms and official authority without sound leadership, good discipline and a regard to the laws of the colony, could result in very serious trouble for themselves.

This is to focus, however, on the outcome of the affair for the settlers. What of Ngati Toa? The Wairau collision was a calamity for them as well. They too lost life, a point all too often overlooked. The Wairau ended the Cloudy Bay mission and the large Ngati Toa community of Cloudy Bay and Port Underwood disintegrated, never to regain its former size and concentration. Moving back across the straits would have had social and economic effects of various kinds which are difficult to assess, but may have been considerable. The affair seems to have caused a serious rift between Rawiri Puaha’s people and the older chiefs, which may not have been complete, or necessarily fatal, but which considerably weakened Ngati Toa in the trials to come. The Wairau also had the effect of demonising Te Rauparaha in the eyes of the settler community who were on the whole unable to see that the battle of the Wairau was in any way the fault of the Nelson magistrates; this made it all the more difficult for Te Rauparaha to reach any kind of accomodation with the settlers at Wellington, try as he would. After the Wairau many came to perceive Ngati Toa power as a risk and menace to European settlement which had to be eliminated. Between 1843-46 this attitude shifted from being merely the opinion of the Wellington and Nelson settlers to become government policy; or, rather, it became government policy to put the plans and aspirations of the New Zealand Company settlers directly into effect using armed force.

²⁹³ Ibid.

²⁹⁴ Wards, *Shadow*, 78.

C. “I will not avenge their deaths”: The arrival of Governor Fitzroy and the Waikanae hui of 1844

The new Governor, Fitzroy, arrived in New Zealand on 9 December.²⁹⁵ He was kept busy at Auckland for some months, and then sailed south on board H.M.S. *North Star* and visited Wellington and Nelson in turn.²⁹⁶ He went first to Wellington, where he startled and angered the settlers who had turned out to welcome him by lecturing them about their bigotry and racial prejudice regarding Maori and particularly singled out the Wellington local newspaper for some stern and well-justified criticism. The Wellington community, needless to say, did not relish hearing this kind of thing one bit.

At Nelson things went even worse. The Nelson settlers prepared a long address²⁹⁷ to the new governor which expressed their pleasure at his appointment, which asked him to investigate the “dreadful affair” of the Wairau and inflict the “just penalty of the Laws” on the guilty – hang them, in other words. Fitzroy gave them no encouragement. Any good feeling between the New Zealand Company settlers and their new Governor, however, did not last long. It would be no exaggeration to say they quickly came to loathe each other. Fitzroy thought that the Wellington and Nelson settlers wanted to provoke a violent confrontation with local Maori if they could, and that they dangerously underestimated Maori abilities in the field: “they would not believe”, Fitzroy wrote later, “that the natives could ever become formidable opponents”.²⁹⁸ These assessments of the aspirations of the Nelsonians and Wellingtonians were undoubtedly right. Fitzroy himself thought that if the settlers were successful in provoking armed conflict with local Maori the outcome would be that Wellington would be reduced to ashes.²⁹⁹ Animosity against Maori was even more pronounced at Nelson than at Port Nicholson.³⁰⁰ Fitzroy publicly reprimanded and lectured the Port Nicholson and Nelson settlers for their various shortcomings and general

²⁹⁵ On Fitzroy see generally Paul Moon, *FitzRoy: Governor in Crisis 1843-45*, Daving Ling Publishing, Auckland, 2000.

²⁹⁶ See Fitzroy, *Remarks on New Zealand*, 18.

²⁹⁷ Address of Nelson settlers to Governor Fitzroy, n.d., but forwarded to Fitzroy by George White, Police Magistrate at Nelson, 13 December 1843, IA 1/44/38, National Archives, Wellington [DB 2079-85].

²⁹⁸ Fitzroy, *Remarks on New Zealand*, 17.

²⁹⁹ *Ibid.*, 18: “[h]ad their efforts to bring on a quarrel been successful, there cannot now be a doubt that Wellington would have suffered a worse fate than Kororareka”.

³⁰⁰ *Ibid.*:

From Wellington the *North Star* conveyed the governor to Nelson, where the state of affairs and the proceedings were somewhat similar to those at Wellington; but as personal feelings had been excited to the utmost, it was natural that there should be more difficulty in persuading those who had lost their friends at Wairau, that under the peculiar circumstances of the case, the government could not, without justice, become their avenger.

recklessness,³⁰¹ and also removed the remaining Nelson J.P.s from their commissions. The Nelson settlers were astounded. Constantine Dillon, a prominent Nelson settler, complained in a letter to his mother that “he speaks to *us* as if we were little middies on board his ship that he can bully as he likes”.³⁰² Mark Francis has memorably written that “on the whole, the Governor and the settlers were correct in their view of each other”.³⁰³

The Governor’s mental balance was a trifle unstable, and they were greedy and unjust.

Fitzroy was given few resources with which to govern and administer New Zealand. He was in no position to launch an attack against Ngati Toa even if he had wanted to, and it may have been this reality as much as any other factor which dictated his actions in early 1844.

One of the first steps the new Governor took was to hold a meeting with Ngati Toa at Waikanae in early 1844 at which many people were present.³⁰⁴ This hui shows once again the interconnectedness between events in the North and South Islands. Fitzroy was accompanied by Major Richmond, Commissioner Spain, Forsaith, and Sir Everard Home, and was greeted at Waikanae by Octavius Hadfield, the CMS missionary, and about 300 Maori people. New Zealand Company people do not seem to have been on the guest list, which they cannot have liked much. Fitzroy made a brief introductory speech, generally to the effect that he had at first been very angry when had learned about what had happened. However, he said, after considering the whole affair carefully, he had heard “that the Pakehas had been very much to blame, and I saw how much you had been provoked”. He then asked for Ngati Toa’s side of the story. Te Rauparaha stood up to speak, and “several voices from among the crowd of his countrymen urged him to speak that they all might hear”. Te Rauparaha gave a detailed account of what had happened. No one else spoke. There was then half an hour’s silence while Fitzroy deliberated, or pretended to. He then got up and announced his decision. “In the first place”, said Fitzroy, “the Pakehas were wrong – they had no right to build houses upon land to which they had not established their claim, upon the sale of which you disputed, and on which Mr Spain had not decided”. They were “wrong in trying to apprehend you”. They “were wrong in marking and measuring your land”. However, had you been Pakehas “you would have known that it was wrong to resist a magistrate”. Where, however, where Ngati Toa was “so very wrong”, he said, “was the killing of men who had surrendered, who trusted to your honour as chiefs”. But said, Fitzroy, he knew also “how difficult it is to restrain angry

³⁰¹ See Philip Temple, *A Sort of Conscience: The Wakefields*, Auckland University Press, 2002, 357-9.

³⁰² Constantine Dillon to Lady Dillon, 11 Feb 1844, in Sharp (ed), *Dillon Letters*, 30.

³⁰³ Francis, *Governors and Settlers: Images of Authority in the British Colonies*, Canterbury University Press, Christchurch, 1992, 214.

³⁰⁴ See Minutes of the Proceedings at Waikanae, 12 Feb 1844, Enclosure (E) in Fitzroy to Stanley, 15 April 1844, GBPP 1845/131, 30-33, BPP(NZ), Irish University Press, vol 4, 184-7.

men when their passions are roused". The Pakehas were greatly to blame, "and as you were hurried into crime by their misconduct, I will not avenge their deaths".

This stance naturally did not please the settler community, and the Wakefields were incensed by the government's failure to exact retribution for the death of their kinsman. But Fitzroy did not, arguably, handle the situation well with regard to Maori either. Te Rauparaha had not been greeted with adequate ceremony.³⁰⁵ Reverend Richard Taylor thought that Fitzroy should have "claimed the district as having been paid for with blood" and that this was what the chiefs were expecting.³⁰⁶ Fitzroy has received, in short, much criticism and blame for this decision, both from his contemporaries and sometimes by historians, and it is interesting to consider Fitzroy's own explanation for his decision in his book published in 1846. Fitzroy no doubt was stung and hurt by the torrent of criticism his conciliatory policy was subjected to in the Wellington and Nelson newspapers, which at both places reflected the New Zealand Company's view of things.³⁰⁷

It would occupy too much of this limited paper to give all the reasons for that decision, which was approved of fully by Her Majesty's Government, though most displeasing to a considerable number of the settlers at Wellington and Nelson. From that time their newspapers never ceased to revile Captain Fitz-Roy, to condemn his conciliatory policy, and to blame every measure which had for its object the prevention of hostility between the white and coloured races.

But what, practically, were the options? Martial law was not in force in New Zealand at the time of the Wairau. Possibly Te Rauparaha and Te Rangihaeata could have been put on trial for murder, but the success of a criminal prosecution was not guaranteed. In his book Fitzroy points out, firstly, that "the English party who caused the Wairau conflict were in the wrong". He thought that "strict justice must have decided against them, and could scarcely have condemned the savages whose fury was so suddenly aroused". In any case, criminal proceedings carried all sorts of political risks. In his *Remarks on New Zealand* Fitzroy analysed the risks as follows:

But, supposing the natives apprehended and tried at a criminal court; legal proof would probably have failed – and they would have been acquitted for want of positive evidence. What object then could have been gained by their trial? Would the great end of all punishment have been attained, of deterring others from committing similar crimes? or rather would not an opposite effect have been caused? Indiscriminate chastisement, by arms, might have been

³⁰⁵ Temple, *A Sort of Conscience*, 361

³⁰⁶ Taylor, *Te Ika a Maui*, 538, cited Temple op.cit., 362.

³⁰⁷ Fitzroy, *Remarks on New Zealand*, 19.

applicable to rebels or aliens; but these natives were considered to be British subjects, and they were not then in a state of rebellion, however ready to rise and defy English authority in New Zealand. Any attempt to apprehend the chiefs Rauparaha or Rangihaiata would have been effectually resisted by force of arms; and had such an attempt been made, of course it must have been carried through. These leaders would have retreated into their fastnesses, where no regular troops could have followed: thousands would have joined them: hostilities against the settlers would have been commenced, and their ruin must have followed: - ruin under the most horrible circumstances of heathen warfare.

Fitzroy perhaps had an exaggerated sense of what would happen had an attempt been made to arrest the chiefs. Two years later Governor Grey kidnapped Te Rauparaha and had him spirited off to Auckland, and nothing much happened. But Fitzroy's conclusions as to the legal difficulties involved in a criminal prosecution were undoubtedly very sound.

Fitzroy's decisions to take no action against Ngati Toa and to dismiss the magistrates at Nelson for their action in issuing warrants for Te Rauparaha's arrest for murder were both endorsed by the British government. On 30 November 1844 Lord Stanley sent a long memorandum to Fitzroy in which Stanley stated that he had read Fitzroy's account of the discussions at Waikanae "with the deepest interest".³⁰⁸ Stanley, presumably acting on the advice of the Colonial Office or the Law Officers, or both, was very doubtful whether the action of burning the huts could conceivably have amounted to arson. Stanley was aware of the feelings of the settlers and the importance of maintaining British authority:

The decision which you had to take was one of great difficulty. On the one hand, a large number of the Queen's subjects had been put to death in a conflict with the natives, and some of them, I am afraid it is too clear, after the conflict had ceased; and I am well aware of the intrinsic force of the argument (as well as the additional force which it would derive from the national feelings of the European community, excited by so tragical an event), that to overlook such an offence against the laws, and to abstain from subjecting the offenders to the rigour of justice, must tend to shake British authority, and to encourage further aggression and outrage.

But the particular circumstances had to be taken into account. These included the willingness of the chiefs to submit to Spain's arbitration, the recklessness of the Nelson magistrates, the probability that even in English law the chiefs were simply resisting an unlawful trespass, the fact that the killings were carried out in 'the first moments of excitement', and the risks involved in attempting to try the chiefs for murder.

³⁰⁸ Lord Stanley to Fitzroy, 30 Nov 1844, GBPP 1845/31, 49-51, [IUP ed vol 4 203-5]

On the other hand, the straightforward narrative addressed to you by Rauparaha himself, and the account of certain circumstances preceding the affray by Mr. Tucker,³⁰⁹ which you enclose, confirm in the strongest manner all the previous evidence tending to show that the unhappy event was mainly caused by the imprudence, to say the least of it, of those who were its victims; that the natives entertained a belief that the land in question had never been sold by those to whom it belonged; that the settlers persisted in surveying it, although they knew that resistance would be made; that the natives were willing to refer the whole case to the Commissioner for whose arrival the Company's agents would not wait; that in destroying the branch-hut erected by the surveyors, the natives believed (and I am not sure that they incorrectly believed) that they were legitimately resisting a trespass; that they studiously abstained from injury to persons or property, and removed the goods of the surveyors before they set fire to the hut; that under such circumstances the charge of arson was one which it would have been very difficult to support, even according to the strictest construction of law; that to attempt on such grounds to arrest and handcuff a proud and warlike chief in the midst of his own people, without an overwhelming force, was the act of the greatest rashness; that the conflict was not sought by the natives, that the first shot was not fired by them, nor the first blood shared by them, and that the prisoners, though brutally slain, were yet slain in the first moments of excitement, before passions had had time to cool. These appear to have been the facts of the case, and on a full and deliberate review of them, bearing in mind also that the capture and trial of the chiefs could not have been effected without further bloodshed; that in the excited state of the public mind an impartial trial could hardly have been hoped for, and that judicial proceedings, commenced after such a lapse of time, could only have had the effect of reviving and aggravating the animosities of race, and rendering future amicable relations more difficult.

In the circumstances Lord Stanley was willing to endorse Fitzroy's decision as "wise, though undoubtedly bold". Nor could Stanley see any reason "to disapprove your acceptance of the resignation of the magistrates who signed the warrant for the apprehension of Rauparaha.

Fitzroy's, and the British government's, decision to take no action against the chiefs has rightly been noticed by historians. Less noticed is the fact that no real action was taken against the New Zealand Company either. Although Fitzroy annoyed the Nelsonians with his tantrums and in effect forced the Nelson magistrates to resign, and although nothing much could be done about the Nelson leaders responsible for the Wairau fiasco (most of them being dead), the Company was not officially censured in Britain in any way. Its particular colonial project was not jeopardised. Given that the actions of the Nelson magistrates could well have committed the Crown to fighting an unwanted and unnecessary war it might be said that the Company, as much as, or indeed more than, the chiefs was treated with remarkable leniency. Subsequently, of course, it was to become government policy to assist the Company in

³⁰⁹ Sic. (Tuckett)

obtaining land for those settlers to whom sections had been pre-sold at the Wairau and at Porirua.

In mid 1844 Commissioner Spain sent a long memorandum to Governor Fitzroy regarding the situation in the Cook Strait district at this time. Spain had hoped Maori would have been willing to obey his decisions, especially given the fact that on the whole he found against the Company and in favour of Maori, but was disappointed that this was (apparently) not the case. Spain seems here to be referring to the refusal of the Ngati Toa chiefs, Te Rangihaeata in particular, to accept compensation (“in cases where they have only sought for compensation, and never denied a partial sale, the moment the amount paid to them was decided upon they began to object to accept it, and to propose terms that could not be entertained”). Clearly embittered and frustrated by this, Spain had come to believe that there had to be a “demonstration of physical force”; “the actual introduction of a sufficient force is as necessary to the Natives as to the Europeans”.³¹⁰ But Fitzroy had no physical force at his disposal, even had he been persuaded by Spain’s letter.

4.7 “Deeds of Release”: 1844

The Wairau affair happened during the course of Spain’s prolonged investigations into the New Zealand Company’s claims to receive grants at Wellington, Porirua, Nelson and other places. Spain began his inquiries in May 1842, and, as has been described already, soon found himself facing a campaign of obstruction from William Wakefield. In August, however, Wakefield shifted ground to some extent, and announced himself prepared to agree to additional compensation to Maori in order to extinguish native titles in the region and improve the Company’s chances for getting a grant to the areas it wanted.³¹¹ A particular zone of contention was the Hutt Valley, where a number of Maori groups were living and cultivating in the lower and middle parts of the valley on land claimed by the Company. Wakefield suggested that the compensation figure be determined by Spain and Halswell (the latter was the New Zealand Company’s self-styled protector of aborigines.)

In order to resolve the impasse over the Port Nicholson purchase, there was a key meeting between Governor Fitzroy, Spain, Clarke (now sub-Protector, a Government appointment, at Wellington), Thomas Forsaith, and Wakefield at Major Richmond’s house in January 1844.³¹² This took place shortly before Fitzroy’s meeting with Ngati Toa at Waikanae, which was on 12 February.³¹³ At the meeting at Richmond’s house, however, no

³¹⁰ Spain to Fitzroy, 2 July 1844, in Turton, *Epitome*, AIII No 18, p 169.

³¹¹ See Anderson and Pickens, *Wellington District*, 230.

³¹² On this meeting see Waitangi Tribunal, *Te Whanganui a Tara*, 125.

³¹³ See Waitangi Tribunal, *Te Whanganui a Tara*, 125-126. Notes of this very important conference are kept by Thomas Forsaith (‘Minutes of the Conference held at Major Richmond’s, on Monday, 29 January 1844’, GBPP vol 5, 26-28.

Maori are known to be present.³¹⁴ Very full minutes of the discussions were kept by Forsaith. Governor Fitzroy asked Wakefield whether he was “prepared to make a fair compensation to the natives who may be entitled to receive it, *without including their paha, their burying places and their grounds actually in cultivation*”. There was some more general discussion and Fitzroy then repeated the point: “If we agree upon this general principle of compensating the natives for lands which they are entitled to receive it, without reference to their paha and cultivations, the details of the arrangement can be adjusted to mutual satisfaction afterwards”. Wakefield said “I am prepared”. This was followed by a certain amount of discussion over the meaning of “paha” and “cultivations”. Spain was then asked by Fitzroy to continue with his hearings, asking him “as her Majesty’s Commissioner, to resume your duties, or rather to continue your exertions as umpire, in effecting the speedy settlement of this question”. The extent of the land for which Maori were to receive compensation under this arrangement was defined as “all that had been surveyed, or given out for selection in the Port Nicholson district, *independent of the paha, cultivations and reserves*” (emphasis added). Following further discussions with Wakefield William Clarke jr. fixed the additional compensation to be paid at £1500 in February.³¹⁵ The Waitangi Tribunal has found that the additional amount of compensation was too low, and Maori were prejudiced as a result.³¹⁶ On 8 February 1844, Wakefield agreed, no doubt gritting his teeth, to pay the additional £1500 compensation.³¹⁷

The way in which these further payments were dealt with seems, in retrospect, very strange. No kind of real negotiation with Maori, whether with Ngati Toa or anyone else, over the amount of the additional compensation ever took place. As noted the decision to proceed with the matter in this way was taken at the meeting at Richmond’s house with no Maori being present. It seems to have been felt by Spain, and perhaps by other officials, and (evidently) by Clarke himself, that, since Clarke was Native Protector, Maori in some way were already bound to accept the amount of further compensation. Or, at least, there could be

³¹⁴ See Waitangi Tribunal, *Te Whanganui a Tara*, 127: “These arrangements were of critical importance to Maori, but they were not included in the meeting.”

³¹⁵ In a report sent to his father in June Clarke wrote (Clarke jr to Clarke sr, 26 June 1844, BPP, vol 4, 464-465, cited Waitangi Tribunal, *Te Whanganui a Tara*, 127):

On the arrival of his Excellency the Governor at Wellington, last January, I was directed by him to resume negotiations with Colonel Wakefield, which had been for some time suspended, and we finally concurred in awarding the sum of 1500*l* to the natives, as compensation for their unsatisfied claims in the surveyed district of Port Nicholson and the vicinity. Having previously obtained the general consent of the natives to accept of a fair award, I based my estimate of it upon what I deemed to have been the marketable value of the land at the time when Colonel Wakefield commenced to treat about the sale of it, modified by the consideration some of them had already received, for dividing the sum I have named. I carefully considered the situation, quality and extent of the land claimed by each tribe, as well as the comparative strength of the claims they respectively advanced.

“How”, observes the Waitangi Tribunal, “on that basis, Clarke reached the figure of £1500 is not known”.

³¹⁶ See the discussion in Waitangi Tribunal, *Te Whanganui a Tara*, 128-34.

³¹⁷ Waitangi Tribunal, *Te Whanganui a Tara*, 146.

no more discussion about it (Spain's behaviour at the meeting he held with Ngati Toa, discussed below, is perfectly consonant with this).

On 23 February there was a special sitting of Spain's court at Te Aro pa at which Governor Fitzroy was present, as well as Wakefield (and, of course, Clarke) as well as a number of Te Aro Maori. The purpose of this hearing seems to have been to secure agreement to the 'deeds of release' scheme, without, however, giving Maori any chance to challenge the decisions that had already been made.³¹⁸ As the Waitangi Tribunal put it, "Spain began, as if he were presiding in court, to hand down a judgment rather than act as the referee in arbitration proceedings".³¹⁹ Spain told them that the proposed arrangement, "made in good faith and after a thorough investigation...must be a final one". Maori who were present were far from happy, and there were some shouts of protest. The discussions went on for some days. Governor Fitzroy himself told those present that the sum was non-negotiable. Finally the Te Aro people capitulated, and signed (this was on 26 February). The Kumutoto, Pipitea, and Tiakiwai people, followed suit, and separate deeds of release were drawn up on the spot and executed by them.³²⁰ The deeds of release did not relate to boundaries exactly, but instead were drafted as a relinquishment of claims or entitlements at specific places. It still remained to pay other groups their share of the compensation money for Port Nicholson. One of these groups was, of course, Ngati Toa.

Before dealing with issues specific to Ngati Toa, however, it needs to be emphasised that there are very serious issues relating to the fairness of the 'deeds of release' scheme in its *entirety*. It must be emphasised that the existence of these deeds and the additional compensation that was paid out by the New Zealand Company at this stage was a principal reason why the New Zealand Company was to be allocated a Crown grant at Wellington. That grant, of course, extinguished Maori customary to the area so granted – including Ngati Toa's title at Port Nicholson and the Hutt Valley. It also has to be grasped as well that the area of the grant was extended well beyond the Company's surveyed sections when the exterior boundary was surveyed in 1844 – to take in, amongst other areas, Ohariu and Makara – and was in turn to be massively extended by Grey. In many ways the *real* purchase for Port Nicholson did not happen at Petone Beach in 1839 but rather at Te Aro, under considerable government pressure, in 1844.

The Waitangi Tribunal has expressed serious doubts as to whether Maori could have understood the nature and scope of the deeds of release. The Tribunal thought that this could hardly have been possible.³²¹

³¹⁸ See Waitangi Tribunal, *Te Whanganui a Tara*, 146.

³¹⁹ Waitangi Tribunal, *Te Whanganui a Tara*, 146.

³²⁰ Waitangi Tribunal, *Te Whanganui a Tara*, 151.

³²¹ *Ibid*, 178.

Maori were being asked to sell valuable land to the New Zealand Company, the Crown having waived its right of pre-emption. The Crown was under an obligation to ensure that Maori knew with reasonable certainty the land they were retaining and the land they were being asked to sell. We are not satisfied that those Maori who signed the deeds of release were adequately informed on these matters. Over 150 years later, this Tribunal has heard very lengthy, detailed and sophisticated arguments from Crown counsel that Maori, by signing the deeds of release, surrendered their interests in the great bulk of their land which was the subject of the invalid 1839 deed of purchase. In turn, detailed submissions were made by counsel for the Wellington Tenths Trust claimants to the contrary. This Tribunal has been obliged to deal at considerable length with the irreconcilable arguments advanced before us. If the meaning and scope of the deeds can give rise to such complex and, at times, highly legalistic argument today, what prospect did Maori have in 1844 of understanding the deed which many of them were pressured to sign? We believe the Maori signatories had minimal understanding.

The Tribunal considered also whether Maori were pressured into signing the deeds of release and concluded that they were.³²²

Our short answer to the question of whether the Crown exerted undue pressure on Maori to sign the releases is ‘Yes’. We have seen that settler pressure on Maori to vacate their land steadily increased. They strenuously resisted – though not always successfully – attempts by settlers to occupy and utilise their land. They clung to their cultivations as best they could and jealously guarded their pa and urupa. However, the Crown permitted Spain to abandon his inquiry into the validity of the 1839 deed and instead appointed him to oversee a deal which would ensure that the company’s settlers gained title to the land ostensibly bought by Wakefield. In this way, ownership of some 67,000 acres of prime land was to pass to the company and its settlers.

4.8 The boundaries of the Port Nicholson Block, and extinguishment of title to Ohariu and Makara

A key issue in the Wellington Tenths Inquiry was the *area* covered by the deeds of release. This is a matter of some importance to Ngati Toa, as this impacts on the extinguishment of customary title to a number of areas of some significance to them, including Ohariu and Makara (but not only these places).

³²² Ibid, 178.

The deeds of release are imprecise documents which simply “release” (i.e. “extinguish”) Maori claims (or, we might say, native or aboriginal title) to areas identified in the Schedule to each deed. The Te Aro deed of release, for instance says this:³²³

We have received on the twenty sixth of the days of February in the year One thousand eight hundred and fourty four from the Directors of the Company of New Zealand at London the payment being made by William Wakefield the Agent of the said Company three hundred pounds money, a full payment a full satisfaction, an absolute surrender of all our title to all our claims, in all our lands, which are written in the Document affixed to this Viz. all the places at Port Nicolson and in the neighbourhood of Port Nicholson in New Zealand, and on the other hand the pahs, the cultivations, the sacred places and the places reserved will remain alone for us, and we consent ourselves to write our names in a Land conveying document hereafter if asked to write them, to the Directors of the said Company of all our claims within the said Lands.

The Schedule lists all the places to which title is extinguished. These places are “Watts’ Peninsular [sic], Evans Bay, Town District, Ohiro District, Karore [Karori], Kaiwarawara, Upper Kaiwarawara, Te ra witi, Oterongo, Makara, Ohariu, Kinapora, Harbour, Horokiwi Road, Lower Hutt, Upper Hutt, Lowry Bay, Pakuratahi, Wainuiomata, Block reserved for Natives Kaiwara.” The inclusion of Horokiwi Road, Makara, and Ohariu (although *not* Porirua) should particularly be emphasised.

But what did this mean? In particular, is this an extinguishment of claims to the Company’s surveyed sections, or is it an extinguishment of claims to the entirety of the Port Nicholson *block* (two radically different things)? At this stage there had been no survey of the exterior boundary of anything that might be called the “Port Nicholson block”, the only definition of which was in the original 1839 Port Nicholson deed. All that had been surveyed were the Company town and country *sections*, some of which – as at Porirua – were at no stage in the Port Nicholson block in any case. (In fact the Company had still not surveyed those country sections allocated to Maori, nor had pa, cultivations and burial grounds been surveyed out either.)

An exterior survey of the Port Nicholson block was finally done by September 1844.³²⁴ The survey was done by the Land Claims Commission’s own surveyor, T H Fitzgerald in association with the New Zealand Company surveyor Samuel Brees. A copy of this survey, dated 7 October 1844, was later attached to Spain’s final report on the Port Nicholson block claim. One effect of this survey was to very significantly expand the area of the Port Nicholson block – as described, that is, in the 1839 deed - to take in a large area of

³²³ Cited Waitangi Tribunal, *Te Whanganui a Tara*, 148.

³²⁴ This plan is reproduced as Map 6 in Waitangi Tribunal, *Te Whanganui a Tara*, 164.

the southwest coast, including Makara and Ohariu. Quite how or why this was done is a bit of a puzzle. The Waitangi Tribunal has drawn attention to this discrepancy in its *Te Whanganui a Tara* report. The Tribunal observes:³²⁵

By September 1844, the survey of the exterior boundary of the Port Nicholson deed had been completed....A notable feature of the plan was *the extension of the boundary to the south-west coast* [emph. added]. As described in the 1839 deed, the so-called western Rimurapa ridge line went down to the south coast at Sinclair Head, but the boundary shown on the 1844 plan extended out to the west coast at Kia Kia (just north of Pipinui Point) and was almost at a right angle to the line recorded in the 1839 deed. As a result, some 40,000 to 50,000 additional acres were added to the deed of purchase area.

Was Maori title to the whole of this (much enlarged) area extinguished by the 1844 release deeds? In the Wellington Tenth's Inquiry Crown counsel maintained that it was. The Crown argued that the deeds "released not only the lands detailed in the schedule to the deeds but the whole of the Port Nicholson deed of purchase area (as extended in 1844), with the exception of pa, urupa, cultivations and tenths reserves".³²⁶ Claimant counsel argued however that the compensation related only to the sections surveyed by the Company. On this very important question of interpretation and analysis the Tribunal made a key finding that the deeds of release related *only* to 71,900 acres of land referred to the schedules attached to the deeds of release.³²⁷

The Tribunal finds that the deeds of release related only to the 71,900 acres of land specifically referred to in the schedule attached to each of the deeds and not to the remaining land included in the 1839 Port Nicholson deed of purchase, as extended in 1844.

This is one of the Tribunal's most important findings in the whole of the *Te Whanganui a Tara* report, because it leads to the consequential finding that when Governor Grey's much enlarged 1848 grant vested the entire area included within the boundaries of the 1839 deed – plus the 1844 Ohariu extension – a very substantial area of land was taken for which no compensation had been paid of any kind. (Had Grey not taken this step the balance would presumably have simply remained in Crown ownership – which in effect would have happened to much of it in any case, given that the Crown was eventually to become the Company's successor in title.)

³²⁵ Waitangi Tribunal, *Te Whanganui a Tara*, 181. See also the map at *ibid*, p 2, which makes the scale of the extension only too clear.

³²⁶ *Ibid*, 151-2/

³²⁷ *Ibid*, 167.

The fact that the extended area happens to include Ohariu and Makara is of particular importance to Ngati Toa. Ngati Toa did not at any time sign releases for these key areas, nor was any compensation paid for them. (Even if Ngati Toa did sign a 'release', and the only candidate for that would be the deed of November 1844 which Te Rangihaeata refused to execute, the compensation, following the Tribunal's analysis, was meant to apply only to the Company sections within this area, not to the whole extension). In other words Ngati Toa never agreed to the alienation of Makara and Ohariu, and was never compensated for it.

4.9 "I had no idea you meant to include the Hutt Valley": Impasse over the Hutt (1844)

A. Introduction

As well as these issues, there is also that of the Hutt. By 1844, however, a complex situation had begun to emerge in the Hutt Valley, which has been analysed by Ian Wards and other writers.³²⁸ Clarke's February 1844 "compensation" agreement was meant to apply to the Hutt Valley, one of its terms being that all of those who had planted crops in the valley would be given a year in which to harvest and remove.

There were, however, a number of Maori groups with interests in the valley. These included Ngati Rangatahi, a Whanganui-Maniapoto descent group, who had assisted Ngati Toa to conquer the valley, led by Kaparatehau; Taringa Kuri's section of the Ngati Tama,³²⁹ and, of course, the chiefs of Ngati Toa themselves, especially Te Rangihaeata. On the whole supported they supported Ngati Rangatahi and Ngati Tama. By early 1844 Rangihaeata had decided to make a stand over the Hutt Valley. It must be stressed that Te Rauparaha and Te Rangihaeata's concerns arose primarily from their resentment over the distribution of the compensation monies decided upon in February: their stance was that the mana over Wellington and the Hutt Valley belonged ultimately to themselves. Te Rauparaha eventually and reluctantly decided to compromise over the Hutt Valley; Te Rangihaeata never did so.

B: Spain's meeting with Te Rauparaha and Rangihaeata, March 1844³³⁰

On 3 February 1844 Te Rauparaha sent a letter to Spain on the subject of the distribution of the compensation payments:³³¹

³²⁸ Wards, *Shadow*, 223-6. See also Joy Hippolite, *Ngati Rangatahi*, Wai 366 Doc#A1, Wai 145 Doc#H4, January 1997

³²⁹ Wards, *Shadow*, 224, citing NZC 3/2, 59; 612.

³³⁰ The main source for this is an OLC file, titled OLC 910-911: Re conference with Te Rauparaha, NA, Wellington.

Friend - Mr Clarke, Mr Spain, and the Governor, this letter is from me and Rangiaiaata respecting your foolish work in paying for the land. This was the cause of you and us getting wrong at Wairau - the foolishly paying to the wrong parties. Do not listen to strange men - but make haste and make known to us your intentions, that the truth of what you have said may be speedily seen. Friend Clarke make haste. Desist from listening to any men. Son Clarke, and Mr Spain, desist also from carrying your payment to men who have nothing to do with it - but bring it straight to myself and Rangiaiaata.

By us. Signed, Rauparaha, Rangiaiaata.

What this means, one assumes, is that Te Rauparaha and Te Rangihaeata were seeking to assert that all of the compensation money should go to them for distribution.

George Clarke replied on 29 February, assuring them that *some* of the compensation money would, of course, be paid out to them:

Friends, Rauparaha and Rangiaiaata. I have received your letter concerning my work of paying for the land. It is quite right friends that I have given the payment to the Natives of Port Nicholson - and, Rauparaha, remember well my words that you heard from me - part of the payment for the Natives of Port Nicholson I shall give to you, and part to the Natives here. I will not forget that promise - let not your hearts be dark - I shall continue to think of you - and do you listen to Pomare. He will tell you particulars.

Whether this mollified the chiefs of Ngati Toa in any way is unknown. In any case the question of the quantum of the compensation money to be allocated to Ngati Toa was to be overtaken by the much bigger problem of whether the Hutt Valley ought to be included at all. Spain himself replied proposing a meeting at Porirua so that the settlement “may be just to you and just to the Europeans”.³³²

The meeting eventually took place at Taupo pa at Plimmerton on the 8 March. Spain, Clarke, Forsaith, some other Europeans, Te Rauparaha, Te Rangihaeata, Te Puaha and about 200 Maori were present. Spain began by stressing the Queen's concern for the welfare of her Maori subjects and then announced that he had decided that a further payment should be made.³³³

I have most carefully and impartially examined and considered all the Maoris have had to say as well as the Europeans about the sale of Port Nicholson, and I am prepared to make my

³³¹ Te Rauparaha and Te Rangihaeata to Spain, 3 Feb 1844, original in Maori, citing ET on file,

ibid.

³³² Spain to Te Rauparaha, 1 March 1844, ibid.

³³³ Spain's address

decision which must be binding and conclusive upon all parties concerned and when once given consent cannot be altered.

I have decided that the Natives who owned the Land described in the Port Nicholson deed are entitled to a further payment.

Spain urged that all “angry feelings” should “cease between us” and urged everyone present to listen carefully to what Clarke had to tell them. He then left the meeting. Quite what it was that Spain expected Ngati Toa to decide, however, is unclear: the quantum of the compensation and the boundaries of the New Zealand Company's Wellington grant had already been fixed. Spain had no intention of letting these points be discussed further. Essentially Ngati Toa were expected to “decide” to accept the compensation money and to stop making difficulties. Forsaith reported what then transpired:

Mr Forsaith, after returning with Mr Spain to Paramatta, rejoined Mr Clarke, and they used every endeavour to persuade the Natives to accede to the terms offered - reasoning with them till late in the evening, but without success. In the morning (March 9th) they again renewed their arguments, but finding the Natives deaf to all their proposals, Mr Forsaith dispatched a messenger to the Commissioner who had requested he might be sent for when the determination of the Natives should be known. On his return the Commissioner addressed the Natives as follows:

“I have come according to my promise of yesterday when I told you that I should leave you to talk the matter over amongst yourselves and Mr Clarke, and return again to hear the determination you had arrived at. I expected to have received a message from you this morning; but not having done so, I am now come myself to know your decisions.”

Rauparaha desired Mr Spain to apply to Rangiaiaata for an answer. Mr Spain said - No, It was in consequence of your letter that came, and I expected an answer from you. It is with you I am come to discuss the matter”.

Rauparaha said: "My letter referred to my claim upon Port Nicholson, and I am ready to negotiate the matter, but now you want me to give up the Hutt."

Mr Spain replied - "I came here for the express purpose of satisfying your claim upon Port Nicholson and have decided that you are to receive £300 - and you know that the Hutt is included in that District. Did not Mr Clarke converse with you on this subject at Waikanae - and did you not consent to the terms proposed? I am very much surprised that after coming here according to your own request you should now refuse to accede to the proposals of your friend and Protector Mr Clarke.

Rauparaha said, I understood I was to have a payment for Port Nicholson, and I am now ready to receive it - I had no idea you meant to include the Hutt Valley - If I had so understood Mr Clarke at Waikanae I should not have told him that I would consent.

Spain, obviously nonplussed by this, then asked Clarke to give his explanation as to what had been said.

Mr Spain asked Mr Clarke if he had not conversed with Rauparaha on the subject of receiving compensation for his claim upon the Hutt, and the removal of his party from that River.

Mr Clarke answered, that he had spoken of his claim under the general term of Port Nicholson; but that the Hutt was clearly understood to have been included.

Rauparaha said - I consider Port Nicholson to mean all the land seaward of Rotokakahi, but that beyond Rotokakahi would be retained by the Natives.

As far as Spain was concerned, however, there could be no discussion as to whether the Hutt was to be included within the terms of the agreement:

Mr Spain replied, The Boundaries have already been fixed by Mr Clarke after most careful consideration, and I can by no means listen to any proposal for altering them: if you wish they shall now be read over to you again.

Rauparaha said, I will not hear of any boundaries that include Rotokakahi - the Natives who reside on the spot will by no means consent.

Mr Spain replied, I am quite aware of the cause of your making this objection - That Man (Taringa Kuri, who was sitting near to Te Rauparaha) told me that he had no claim upon the Hutt, and promised to leave it after he had taken off his crop - he also said that he was only sent there by you to keep possession until your claim was satisfied - and now I ask you if you have not within the last 24 hours told "Kuri" that if you chose to sell the land you would turn him off - that as he had no right there he must go to his own place.

Te Rauparaha then said that the "real chief" was a young boy who was present. I am not certain who this could be. One possibility is that the boy was Wiremu Naera Pomare, son of Te Rongo of Ngati Toa, and the adoptive chief of Ngati Mutunga (he was adopted by Wiremu Piti Pomare); if so this would indicate that as far as Te Rauparaha was concerned the mana of the Hutt Valley and Wellington belonged to Ngati Mutunga and Ngati Toa.

Rauparaha said - it belongs to Taringa Kuri - he is the elder man of the resident Natives, and that child (pointing to a boy who was present) is the real Chief of the Place.

Mr Spain said - If you continue to reject my offers I am sorry, but be assured that the boundaries already fixed upon must be considered final - and the sum awarded (£300) will not be increased. Mr Clarke has been specially appointed to arrange these boundaries and they have been fixed upon after much careful deliberation - and I have decided that the sum offered is just and equitable, and more than you are really entitled to.

Rauparaha said, I cannot interfere, and Rangiaiaata will not consent to your proposals.

Spain reproached Te Rauparaha:

Mr Spain replied - Then why did you send for me? Have you not often said you would abide by my decision - and asked me to get things settled for you? Do you not recollect what you said to me at Waikanae: "I am now a Christian, and I want peace." I have done all I can for you - I have no interest in the question - I have tried all the means in my power to arrange this matter and to remove all causes of quarrel between you and the Europeans - I have made my decision and I cannot alter it - I have now nothing to do but to go away - I am sorry for it.

Rauparaha said - detaining Mr Spain, who was rising to leave - Do not go away in anger - I do not wish to upset the arrangement but the boundaries must be altered. Mr Spain said - No. I do not go in anger, I go in sorrow. It is not I that have upset the arrangement. I go in sorrow because you refuse the offer which has been made you. I have decided it according to my conscience and I cannot alter it.

Spain repeated his final decision: £300 plus a further £100 for the crops: "this is my final decision - which will never be altered." The meeting then broke up.

On 1 April George Clarke wrote to his father explaining what had happened, and blaming the breakdown of discussions on the influence of Europeans who had taken it upon themselves to tell the chiefs that their interests in the Hutt Valley were worth far more than a mere £300:

You will have heard from the Governor of the arrangements we entered into with the New Zealand Company's Agent for the compensation for the unsatisfied native claimants in this district which we have settled all except the Hutt district and two or three places of little importance. We went to Porirua where we had a korero with Te Rauparaha and Rangihaeata to whom I had awarded the sum of £300 - for their claims to the Hutt but they quarrelled about the amount and our negotiations ended without coming to terms. I have twice heard from authority in which I place the utmost reliance that it is in a great measure through the influence of the Europeans. The natives were told by one person that the sum I awarded them would not purchase an ordinary house in Port Nicholson, by another that the whaling [] each made ten times the amount in one season, by another, that their claims on the Hutt were worth £10,000 and one person told them that they were worth at least £100,000. What can the object of these people be? Are they not doing all in their power to throw obstacles in our way? [line missing on photocopy]. Can we be surprised at the conduct of the natives? Is it my fault or will it be the fault of the Government if we fail in our ultimate object? When we have to fight in the very teeth of so muc opposition?

Clarke, it is clear, resented the meddling, but his letter is evidence that the £300 offered as compensation for Ngati Toa interests in the Hutt Valley was very low.

C: Taringa Kuri cuts the line at Rotokakahi

A few days after the March 1844 meeting Taringa Kuri and his people were observed cutting a boundary line at Rotokakahi in the Hutt Valley “on the North Eastern bank of the river some thirty or forty yards broad, and extending nearly a mile in length”.³³⁴ The boundary was clearly being cut on a scale that none could mistake it, or misunderstand its significance. Spain and Forsaith went to investigate, and found that Ngati Tama were cutting the line on Te Rauparaha’s instructions. Its purpose was the obvious one of to dividing the lands of the Europeans around the harbour and lands in Maori possession in the valley:

We proceeded down the line until we came to the party still at work. On enquiring for Taringa Kuri we were informed that he had returned to his residence; we accordingly retraced our steps and followed him to the Pa, accompanied by several of the Natives who were exceedingly anxious to ascertain the object of our visit. One of them in particular, a person apparently of some authority, but whose name I could not ascertain, assuming a very unwarrantable and disrespectful tone said, "If you are come to make any remark about our cutting this line you may as well return at once, for we will listen to nothing you have got to say on that subject - We have quite made up our minds on the course we intend to pursue, nor will we be deterred from it by you, by the Governor, or by the Queen herself".

Forsaith and Spain were indignant:

I replied he was offering us a very gratuitous insult - that our object was to see Taringa Kuri, the chief of the party - but as he without reason spoke so disrespectfully of the Governor, Mr Spain and myself should decline holding any further conversation with him.

Taringa Kuri was finally found, but he was scarcely less forceful.³³⁵

We proceeded to the Pa, where we found Taringa Kuri and a few of the Natives who, on hearing our arrival, had returned from their work. Mr Spain requested me to ask Taringa Kuri what was the object of their present undertaking. He replied, “I am cutting a line according to the directions of Rauparaha two divide between the Lands of the Europeans and our own.” Mr Spain answered "But you know this is very wrong, this is not the line agreed upon by Mr

³³⁴ Forsaith to Superintendent, Sthn. Division, 21 March 1844, *ibid.*
³³⁵ *Ibid.*

Clarke and explained by him to Te Rauparaha at Waikanae, and I am very much grieved that you should act in this way as it plainly proves you are not peaceably inclined. It is very wrong and will not be allowed." Taringa Kuri replied, "It is *we* who are peaceably inclined, it is *you* who are not peaceably disposed towards us. You heard at Porirua as well as I that Rauparaha and Rangihaeata would not agree to these boundaries, and all I have to say is that if you are determined to insist upon these boundaries you had better return to the land of your birth - Why do you follow us from place to place to take away our Land?"

Taringa Kuri declined to stop the work, and told Spain that "you have heard our determination, and I will abide by it, whatever the consequences".³³⁶ Frustrated, Spain then wrote to Te Rauparaha to protest about Taringa Kuri's boundary-cutting activities in the Hutt Valley, taking the opportunity when he did so to administer a lecture on the principles of international law relating to empty lands.³³⁷

Here is a vast country whose scanty population is incapable of occupying the whole...In such a case, it is a law with the Natives of Europe that the inhabitants of such a country have no right to appropriate to themselves more land than they have occupied for, or more than they are able to settle and cultivate. Their unsettled habitation in these regions cannot be held to be a true and legal possession.

In any case, Spain insists, in New Zealand the lands have not been taken by force; instead the Natives have been "paid largely and liberally for their land...instead of coming with ships and troops, and taking possession by force, the people of England have bargained fairly and justly with the Natives..." Quite what this attempt to instruct him in the theories of Vattel can have meant to Te Rauparaha is hard to imagine. Te Rauparaha's reply has survived, however:³³⁸

Friend, Mr Spain, health to you - do not suppose it is I who withhold the land. It is not I but Rangihaeata and Kaiaea (Taringa Kuri) who are withholding the Hutt. I did not advise that the Hutt should be withheld. At our meeting at Porirua some time ago I said to Rangihaeata, surrender up the Wairau while I am well - but Rangihaeata negated my word - and I submitted to him - on this account was the mischief at Wairau.

Te Rauparaha explained the cause of Te Rangihaeata's anger:

Why did you give so large a payment to the Ngatiawa, and offer so small a one to Rangihaeata who holds the land?

³³⁶

Ibid.

³³⁷

Spain to Te Rauparaha, n.d. on file copy but late March 1844.

³³⁸

Te Rauparaha to Spain, 27 March 1844, *ibid.*

Te Rauparaha did not accept that he was to blame for the situation unfolding in the Hutt Valley. He concluded his letter:

Friends, Mr Spain, Mr Clarke, is it the case that I only am to blame - no - we are all to blame together.

By mid-1844 Spain's work was more or less over. The situation in the Hutt Valley remained unresolved. As Wards points out, Te Rangihaeata and Taringa Kuri were not, in fact, claiming the whole of the Hutt Valley, but were willing to share it:³³⁹

Te Rangihaeata's insistence that the valley be divided between Maoris and settlers is worth more attention, particularly as he was content that the Europeans should receive both the larger and the coastal portion. It places him firmly outside the role usually given him, as implacably anti-European, and makes of him the first, European or Maori, to advocate that a given area of land be suitably shared by both races. The Company had already sold the disputed land, and no attempt was made to explore the possibilities of the situation.

D. The November 1844 Deed

In November Fitzroy met Te Rauparaha, Te Rangihaeata, Matene Te Whiwhi and Rawiri Puaha at Waikanae to settle the Hutt issue.³⁴⁰ Fitzroy arrived at Waikanae on 4 November where he met both Hadfield and Te Rauparaha. On 4 November Hamilton, Fitzroy's secretary, recorded that they "saw Mr Hadfield and Rauparaha - very hard up for money as report says - Hutt business may probably be settled...a person named Fisher has been doing a great deal of harm along this coast."³⁴¹ The following day £400 in cash was brought ashore. Te Rauparaha and Te Rangihaeata said that "we [the government] might do what we like with the Hutt" but declined to take any money. Rawiri Puaha and Matene Te Whiwhi were very keen to get the matter settled.

The following day Fitzroy went ashore again, but once again Te Rauparaha and Te Rangihaeata "refused to take any money until they can do so when Rewa (Reretawhangawhanga) will not be in a position to know about it, but promised to recall Taringa Kuri from the Hutt Valley". Fitzroy left evidently under the impression that the Hutt question had been settled. But there does seem to have been a lack of clarity as to the crops

³³⁹ Wards, *Shadow*, 225, fn. 3.

³⁴⁰ See Hayes, *Hutt Valley*, 28-32.

³⁴¹ J W Hamilton, Memorandum, 4 November 1844, (ATL MS 2302), cited Hayes, *Hutt Valley* 29.

being grown in the valley: Clarke advises Hamilton (Fitzroy's secretary) that "it may be necessary to allow them to remain until they can take up their crops".³⁴²

On 12 November 1844 a deed, drawn up by Clarke, and signed by Te Rauparaha, purportedly paid £400 to Te Rangihaeata and Te Rauparaha as compensation for their interests in the Hutt Valley.³⁴³ The deed was witnessed by Matene Te Whiwhi and Tamihana te Rauparaha, Ngati Toa's principal younger Mihanere chiefs, and it is likely that they were the driving force behind this arrangement. Wards states that "Te Rangihaeata's signature was in fact that of his nephew, who signed in the hope that his doughty uncle would eventually be reconciled to the alienation of the Hutt Valley".³⁴⁴ Ballara remarks that "Te Rangihaeata's name was forged on the deed of sale by his nephew Matene Te Whiwhi in a misguided attempt to speed settlement."³⁴⁵

This November deed was in fact merely a sort of receipt, quite unlike the other release deeds. Clarke paid the £400 over to Te Rauparaha and the others, and received a receipt in exchange, the English translation of which stated:³⁴⁶

Let all men know the contents of this document. We two consent to surrender Heretaunga to the Governor of New Zealand on behalf of the New Zealand Company. We have received £400 in payment. Hence our names and marks are written below, on this day, the 12th day of November, in the year of our Lord, One Thousand Eight Hundred and Forty-four.

Na Te Rauparaha X his mark

Na Te Rangihaeata X his mark

In the presence of Henere Matine Te Wiwi
Tamihana Katu

In an important finding its *Whanganui a Tara* report the Waitangi Tribunal rejected the Crown submissions on this agreement and instead accepted the arguments made by counsel for Ngati Toa (Tom Bennion and Deborah Edmunds) that no binding agreement was ever reached with Ngati Toa in 1844. In the Tribunal's view:³⁴⁷

The Tribunal has given careful consideration to the relevant evidence and submissions of counsel for Ngati Toa and the Crown. We conclude that no binding agreement on Ngati Toa can be said to have been consummated on November 12 1844, given the refusal by Te Rangihaeata to sign, his reason for so refusing, and his rejection of half the £400 paid to Te Rauparaha. The fact that Te Rauparaha accepted the £400 and may have signed the receipt

³⁴² Clarke to Hamilton, #C1(g). cited Hayes, *Hutt Valley*, 30.

³⁴³ Turton's deeds, p 98 (Wellington, No. 3).

³⁴⁴ Wards, *Shadow*, 225.

³⁴⁵ Ballara, "Te Rangihaeata", *DNZB* vol 1, 490.

³⁴⁶ *Turton's Deeds*, p 98, cited Waitangi Tribunal, *Te Whanganui a Tara*, 201.

³⁴⁷ Waitangi Tribunal, *Te Whanganui a Tara*, 205.

could not bind Ngati Toa, because Te Rauparaha himself recognised that it was Te Rangihaeata who held the principal interest in Heretaunga on behalf of Ngati Toa. Te Rangihaeata's agreement was essential, and he consistently maintained that from that time he would consent to the transaction only if land were reserved for Ngati Rangatahi in Heretanga...Te Rangihaeata never resiled from that position.

Te Rangihaeata later shifted ground in 1845 and accepted a share of the purchase money provided that the interests of Ngati Rangatahi in the Hutt were safeguarded. The principal document relating to Te Rangihaeata's intentions is a report sent by Henry Tacy Kemp to Richmond on 23 July 1845 relating to various discussions held at Porirua. This makes clear Te Rangihaeata's continued concern to protect the interests of Ngati Rangatahi in the Hutt Valley:³⁴⁸

Rangihaeata in presence of several of the Chiefs gave a minute account of what transpired at the Time of the Purchase made by His Excellency the Governor at 'Waikanae' in which he affirmed in the strongest manner the opposition he made to the sale of the Hutt to the exclusion of the Tribe of the Ngatirangatahi Natives who he stated had been sent there by the direction of Te Rauparaha himself to hold possession after the expulsion of the Ngatikahuhunu [sic] before the arrival of any Settlers and who therefore in strict observance of their Native Customs could not be dispossessed by any act to which They were not parties. He stated that he declined to accept a share of the Money unless a portion of the Land was guaranteed to the Tribe alluded to and he is still under the Impression that his Excellency was willing to entertain his request, altho' Te Rauparaha objected at the Time to their Claim being considered and promised to use his Influence in removing Them to another Settlement. He referred very particularly to the Signature attached to the Deed of Sale and most positively denied it to have been his or to have been affixed by his authority. On this point his Evidence seems to be borne out by the Testimony of several witnesses and more especialluy by the confession of Martin [i.e. Matene] grandson of Te Rauparaha who signed for him in the hope that his uncle Te Rangihaeata would ultimately become reconciled and approve of the Transaction. In this respect he seems to have been disappointed and the difficulties with which Your Honour has had to contend go much to prove that the voice of Te Rangihaeata was of equal proportion with that of his uncle.

Having however but only now agreed to accept the Share of the Payment sent to him by Rauparaha he (Rangihaeata) after much discussion finally settled and proposed That a portion of Land should be allocated to The Ngatirangatahi for the purposes of Cultivation, and I understood from some to the Young Men belonging to that Tribe that in the event of this being granted They would quietly resign the Pa's and Plantations now in their occupation at the Same time.

³⁴⁸ Kemp to Superintendent, 23 July 1845, NM 8/1845/307 (see also Waitangi Tribunal, *Te Whanganui a Tara*, 204).

During 1845 there was a hiatus, an increasingly tense one, in the Hutt Valley, while the colonial government's attention was focused on the northern war with Hone Heke and Kawiti. Settlers continued to move into the valley. One of the odder features of the complex problem was that Maori living in the valley were growing crops for sale in Wellington. The Pakeha settlement at Wellington was beneficial for them, and they were beneficial for it. It became increasingly clear that the Maori inhabitants of the valley were not going to leave, and if that if that if they were to be driven out this could only be with the use of military force. Major Richmond seems to have made up his mind by December 1844 that the Maori in the valley would have to be driven out by force.³⁴⁹ In December Hutt Maori began clearing and burning off land in preparation for planting potatoes, a breach of the understanding reached with Te Rauparaha in November. It was in this charged situation that Te Rauparaha went to the Hutt Valley in May 1845 in an attempt to persuade Kaparatahau and his Ngati Rangatahi to leave the valley. By this time, however, the earlier differences of opinion between Te Rauparaha and Te Rangihaeata had widened into an open breach, and Te Rauparaha's visit was an embarrassing failure. Wards writes:³⁵⁰

On 12 May Te Rauparaha arrived in Wellington with the announced intention of exerting his influence in the valley on behalf of the Europeans, but although Richmond had him conveyed in state aboard the *Victoria* to Petone, his visit was a miserable failure and he appeared tamely to submit to insult and opposition.

Kaparetahau knew he could count on the support of Te Rangihaeata; or, perhaps, the situation was rather that Kaparatahau supported Te Rangihaeata and the issue had in part become one of a division within the Ngati Toa leadership. Te Rauparaha's stance has much in common with his later actions respecting the sale of the Rangitikei-Turakina block in 1848; he opposed it at first, but when the younger chiefs such as Matene Te Whiwhi urged that the sale should proceed Te Rauparaha withdrew his opposition. Te Rangihaeata carried on with his opposition to the last minute. He was consistently firmly opposed to land-selling to the Crown. As Ballara puts it, "for the rest of his life Te Rauparaha was an angry man, totally opposed to the erosion of his authority by means of the creeping European disease of land purchase."³⁵¹

All through 1845 the impasse in the Hutt continued: Kaparatahau and Taringa Kuri stayed where there were, developing their cultivations; Te Rauparaha did his best to reach a compromise; Te Rangihaeata continued to support Taringa Kuri and Kaparatahau. The

³⁴⁹ Hayes, *Hutt Valley*, 35.

³⁵⁰ Wards, *Shadow*, 236.

³⁵¹ Ballara, "Te Rangihaeata", *DNZB* vol 1, 490.

government remained committed to force, but in 1845 it was embroiled in the northern war with Hone Heke's Ngapuhi (this eventuated after Heke cut down the flagstaff at Kororareka for the second time on 18 January). No force was available at Wellington. That changed in 1846. Before that happened Commissioner Spain finally ended his sluggish inquiries and released his awards.

4.10 The Spain Commission Findings (1845)³⁵²

A. Introduction

A key step in the alienation of Ngati Toa land generally is the process of investigation into the New Zealand Company's land claims by Commissioner Spain. Spain had commenced his investigations in May 1842, but the process of inquiry was a very protracted one, and he did not issue his final reports until mid 1845. The process of inquiry into the the Port Nicholson and the Nelson deeds has already formed the subject of a considerable amount of evidence (including reports written by the present author) filed in the Wellington and Northern South Island Inquiries, and – in the case of Wellington – has now been reported on by the Waitangi Tribunal.³⁵³

As I have argued elsewhere, it is a misconception to believe that Spain was investigating the 1839 deeds as such. They had become largely irrelevant after November 1840. Spain saw his task as to determine whether the New Zealand Company was entitled to a Crown grant at a number of *particular* localities, including Wellington, Porirua, Nelson and New Plymouth. This explains why in his consideration of this issue with respect to Nelson, for example, Spain focused on the totality of the alleged compensation paid by the Company, not merely in consideration of the pre-Treaty deeds, but also regarding the 'presents' paid to local Maori at the time of the establishment of the Nelson colony and then with the separate 'releases' in 1844 – which Spain had taken an active role in arranging. His discussion of the Company's entitlement to grants at Wellington and Porirua were in the same terms. At Wellington, as noted, just as at Nelson, there had been extra deeds of 'release' – essentially, additional payments to Maori – which Spain had also been instrumental in arranging. There had however been no additional release deeds for Porirua, which probably reflects a widespread perception that Ngati Toa would never have accepted them.

B. The New Zealand Company's Claim for a Crown Grant at Port Nicholson

³⁵² Spain's reports are in Command Paper 1846/203 and can be conveniently found in BPP/NZ vol 6, which is the text used

³⁵³ Waitangi Tribunal, *Te Whanganui a Tara*, 2003, especially pp 100-102, 113-144, 182-186.

In his final report on Port Nicholson, written at Auckland and dated 31 March 1845, Spain naturally has a great deal to say on the vexed subjects of Te Rauparaha, Te Rangihaeata, Taringa Kuri and the Hutt Valley.³⁵⁴ Spain thought that the principal basis for a territorial claim to the Hutt by the chiefs of Ngati Toa derived from the original conquests, of which he gives a rather garbled depiction in his report:

I have taken every means in my power to ascertain the grounds of the claim of Rauparaha and Rangiaiaata to the Hutt, which I can only trace to the following circumstances: - Many years ago (I believe I may say from 15 to 20) Rauparaha and Rangiaiaata fought their way from Taranake to Port Nicholson, conquering as they came along, but without sufficient force to keep possession of the places they had taken, which were afterwards shortly afterwards re-occupied by their original proprietors, who have kept possession ever since. Now, according to my opinion of Maori customs with regard to title to land, this would not have given these men a title to the Hutt; and in my judicial capacity, in the exercise of my best judgment, I should have decided against it if it had been brought before me.

Possibly Spain is right about this. A mere temporary conquest, following which the land returns to the possession of the original inhabitants, does not confer title to land according to Maori customary law (although it would probably be wise not to be too dogmatic about this, and in any case what could Spain know about Maori customary titles?).

It is hard to see, however, what relevance this could have to the circumstances of the Hutt Valley. As has been noted elsewhere in this report, the actual details of the conquest of Wellington are shadowy in the extreme. It may be that the original take or claim derives from the actions of the original Ngapuhi-Ngati Toa taua of 1819, although for practical purposes the effective conquest of the area was carried out by Ngati Mutunga. How deeply their influence penetrated up the Hutt Valley is hard to say. Ngati Rangatahi seem to have plaid a supplementary role to Ngati Mutunga in securing the Hutt Valley. By the time of Spain's award Ngati Ira/Ngati Kahungunu influence in the valley seems to have been over. This point has been considered by Heather Bauchop, who, although noting that Te Ati Awa were wary of advancing into such places as the Wainuiomata Valley due to the risk of being attacked by marauding groups of Ngati Kahungunu, in general there is "no evidence of occupation by Ngati Ira as a hapu in Te Whanganui a Tara after 1840."³⁵⁵ Although I would not contend that Ngati Ira/Ngati Kahungunu had lost all presence in the valley by 1839, it is straining things greatly to believe that the original inhabitants could be said to have regained possession. It is hard to be certain what Spain was thinking of. In Maori terms, the question is one of ahi

³⁵⁴ See BPP 1846/203, 4-18 Doc#A32, 66-79.

³⁵⁵ Heather Bauchop, *Ngati Ira and Rangitane in Te Whanganui a Tara to 1865*, Wai 145, Doc#H5, January 1997, 18.

kaaroa. Were Ngati Ira's and Ngati Kahungunu's fires burning in the Hutt Valley by 1839? It is impossible to imagine that Te Rangihaeata would have conceded this. It is clear that Te Rangihaeata believed that he had the mana over the valley, and that both Taringa Kuri and Kaparatahau were strongly influenced by him.

Spain can be criticised for seeing the situation in the Hutt Valley in simplistic terms. In so doing, he may have set a trend by which Ngati Toa interests in this, as in other areas, were too readily written off because Ngati Toa did not take up occupation and cultivation themselves. Spain's approach is an earlier example of the process of simplification and standardisation of Maori customary practice later to be conducted by the Maori Land Court. Whether, however, there is any direct continuity between Spain's approach to the Hutt Valley in his report of 1845 and Judge Mackay's decisions in the Wellington and Nelson Tenth's cases in 1886 and 1892 is unclear.

Spain also expressed the view that if Te Rauparaha had attempted to take possession of the Hutt Valley, Ngati Awa would have driven him off:³⁵⁶

Another strong ground against their claim is, that on the arrival of the "Tory", Colonel Wakefield found the Ngatiawa tribe, of whom he professes to have purchased, in possession of Port Nicholson and the Hutt (and which they had held for nine or ten years), and if Rauparaha at that time had attempted to take possession of the Hutt, he would have been immediately driven away by Warepouri, Puni, and their party.

It is admittedly hard to pronounce on whether Te Rauparaha could have enforced a claim to the Hutt Valley and Wellington in the face of armed resistance by Te Ati Awa, or whether he would have wanted to. I would not be as confident as Spain seems to be in assuming that in such an eventuality Te Rauparaha would have been "immediately driven away". In fact it is hard to imagine the situation arising at all, due to the kin connections between Ngati Toa, Ngati Mutunga and Te Ati Awa. The fact is that Te Rangihaeata *did* assert to a claim to mana over the Hutt Valley, and this was without any reference to Te Ati Awa whatever as far as I can judge, whose interests in any case seem to have been mainly confined to the harbour rim.

A close reading of Spain's report shows that he is completely unaware of the existence of Ngati Rangatahi, let alone any awareness that Te Rangihaeata felt under an obligation to protect their interests. Why Spain was unaware of this is a puzzle. He may have simply seen Kaparatahau and Ngati Rangatahi as Ngati Toa (or Ngati Tama, perhaps). Spain's bete-noire is Taringa Kuri of Ngati Tama, and it is clear enough from the report that Spain was still smarting over the latter's rudeness to him.³⁵⁷

³⁵⁶ Ibid, p 10, Doc#A32, 72.

³⁵⁷ Ibid, 12 (74).

I have the honor to call your Excellency's attention to the enclosed narrative of my journey up the Hutt, where I went in consequence of Taringa Kuri and his people having commenced cutting a line dividing the Upper from the Lower Hutt, and claiming the upper part, although it was included in the Schedule of land adopted by Messrs Wakefield and Clarke. I was very much struck with the tone and the manner of Taringa Kuri, and his party on this occasion, and it was evident to me that he was acting under the direct orders of Rauparaha and Rangiaiaata.

Spain concluded that the grant should be made, despite the objections of Te Rauparaha and Te Rangiaiaata:

I have given at length the reasons why I think the ultimate refusal of Rauparaha or Rangiaiaata, or both of them, should be no bar to the issue to the Company of a Crown grant for the whole block agreed upon between Colonel Wakefield and Mr Clarke, *including the Upper Hutt* [emphasis added]; and I cannot for one moment admit that Taringa Kuri, or his people, has or ever had the shadow of a claim to that particular spot.

C. *Investigation of the New Zealand Company's Kapiti Claim and Ngati Toa*

Commissioner Spain's principal enquiries into the Porirua or Kapiti deed were conducted on two separate occasions: at Port Nicholson in June 1842, when the deed was produced by William Wakefield, and when evidence was also given by E.J. Wakefield and John Brook, the interpreter; and a year later at Otaki in April 1843 when evidence was given by Te Rauparaha, Te Rangiaiaata, Te Whatanui (Ngati Raukawa), Rere Tawhangawhanga (Te Ati Awa), Te Ahu Karamu (Ngati Raukawa) and others. The 1843 Otaki evidence related also to the Company's Queen Charlotte Sound and Manawatu purchases.

In his March 1845 Report Spain disallowed the New Zealand Company's Porirua claim, largely because of the conflicting evidence between Te Rauparaha and Te Rangiaiaata on the one hand and Colonel William Wakefield on the other.³⁵⁸ The Company's claim to a Crown grant at Porirua rested on what Spain called the "two over-riding deeds", one of which was signed at Kapiti and the other in Queen Charlotte Sound. There was no separate "Porirua deed", and once again it must be stressed that Spain's task was not to determine the validity of the 1839 *deeds*, but rather whether the New Zealand Company was entitled to a *Crown grant* of its surveyed sections at the various places (Port Nicholson, Nelson, Porirua etc.) that it was claiming. After carefully reviewing the testimony of Colonel Wakefield, E.J. Wakefield, Brook (the interpreter), Te Rauparaha and Te Rangiaiaata, Spain stated:

³⁵⁸ Spain's Report No 5 [Porirua], in *Reports by Commissioner of Land Claims on Titles to Land in New Zealand*, BPP/NZ, vol 6, 93-98.

The evidence I have just quoted is all that bears materially upon the sale or otherwise of Porirua, and its conflicting nature affords another strong proof of the very difficult duty I have had to perform; on the one hand I have the evidence of Colonel Wakefield, Mr. E. Jerningham Wakefield, and Brook, in favour generally of the purchase of the vast territory described in the deed, including the Porirua district; on the other hand I have the positive denial of the principal chiefs who were parties to the alleged sale, that they then sold or ever intended to sell any land whatever, except Taitapu and Wakatu.

Spain concluded that the New Zealand Company's claim had to fail. There were four main reasons for this, the first of these being the clear conflict in the evidence already referred to. The second was because of Spain's doubts about Brook's reliability as an interpreter: he was "any thing but a correct interpreter". The third reason was the *place* where the discussions, such as they were, had taken place. There had been no negotiations at Porirua itself, which might have proved some sort of understanding that it was the place being negotiated for: rather the discussions had happened at Kapiti on board the *Tory*:³⁵⁹

The transaction took place at Kapiti, on board the "Tory," and was therefore less likely to convey to the natives an idea that they had sold Porirua, than if the negotiation for and ultimate completion of the purchase had taken place on shore, *on the district claimed* [emph. added].

Perhaps the most interesting reason for rejecting the Company's claim, however, was Spain's final point, which was that Ngati Toa actively opposed occupation of Porirua by New Zealand Company settlers:³⁶⁰

All the circumstances detailed in the evidence quoted taken into consideration, *with the steadfast opposition by the selling parties to any occupation of the district of Porirua, by the Company's settlers from the earliest attempt to locate them there*, have induced me to decide against the Company's claim to that tract of land...

Spain is here referring to Te Rangihaeata's actions in 1842, when the settlers' houses at Porirua were dismantled (discussed in part 4.4, above). However, the extent to which this was really decisive should not, of course, be exaggerated. The Company had already gone ahead and allocated sections at Porirua and Ohariu and it was in order to put these settlers into possession that Grey went ahead with the Kapiti Crown purchase in 1847. The New Zealand Company settlers were to get their sections in the end, or at least most of them.

³⁵⁹ Ibid, 97.

³⁶⁰ Ibid, 98.

D. *Ngati Toa, Commissioner Spain, and the Company's Nelson Claim*

Spain's report on the New Zealand Company's claim to Nelson is dated 31 March 1845.³⁶¹ The Company's original claim for a Crown grant at Nelson was founded on the two deeds of 25 October and 8 November 1839. Whatever the Company thought it had acquired, or what Ngati Toa and the Queen Charlotte's Sound Ngati Awa had supposed they were agreeing to in 1839 had by this time become largely (not wholly however) irrelevant. The Company was no longer was pressing a claim to the huge region supposedly ceded in 1839. As Spain put it:

Had I...been compelled to inquire into the title of that body to but a moiety of this enormous territory, my labours at this moment would have been far from a termination, but my investigation of its claim has been of course materially narrowed by the arrangement with Her Majesty's Government, which restricted the selection of land by its Agent in the Colony to certain quantities of land in certain localities.

The question was not, in short, whether the 1839 deeds were to be upheld or not, but whether, taking all relevant evidence into account - including events during and after 1839 - the Company was entitled to a grant at Nelson (the same issue as at Port Nicholson and Porirua). Although Spain concluded that the 1839 deeds were more or less worthless, he nevertheless found that the Company should receive its grant.

Spain concluded that the Company was entitled to a grant of 151,000 acres. It is probably not necessary to repeat the wording of Spain's recommendation here.³⁶² He found that the Company was entitled to 11,000 acres at Nelson, 38,000 acres on the Waimea plains, 15,000 acres at Moutere, 42,000 acres at Motueka, and 45,000 acres at Massacre (Golden) Bay. Some of parts of these areas had already been surveyed, which the Company could have; the unsurveyed balance was to be "selected from the portions of land coloured red in the Plan No. 1 hereunto annexed".

Spain's turgid, indeed pompous writing style does not make it easy to discern why he thought that the Company should receive any grant at all, or if so why to these particular areas. The following, I suggest, is the key passage of his report, in which at least three interconnected ideas are buried (rather than elucidated).³⁶³

We have seen the admission of the sale of two places, Taitapa [sic] and Wakatu, Massacre Bay and Blind Bay, by the chiefs under whom the present claim is advanced (though, be it distinctly remembered, even in these instances the resident Natives were subsequently paid

³⁶¹ Spain's report is printed in Mackay, I, 54-60.

³⁶² See Mackay, I, 60.

³⁶³ Mackay, I, 59.

over again); and to the occupation by the Company's surveyors and settlers in these districts, no opposition had been offered, up to the date of the sittings of my Court at Nelson, by the original selling parties.

Essentially the company was entitled to its grant (i) because it had extinguished the Ngati Toa title by purchase; (ii) because of the second payment made to resident Maori; and (iii) because the "original selling parties" had made no objection to the Nelson settlement.

(i) As noted, Spain thought that the 1839 deeds were worthless and accepted Ngati Toa's evidence as to the highly restricted and localised nature of what they thought they were selling. One plank of his reasoning seems to be nevertheless that Te Rauparaha and Te Rangihaeata did at least accept that they had sold "Taitapu" and "Whakatu". Spain read this in a very broad sense to mean that Ngati Toa had agreed to sell the "Massacre Bay" (Golden Bay) and "Blind Bay" (Tasman Bay) districts. Thus the Company's entitlement to a grant was in part founded on valid agreement with Ngati Toa.

There are some difficulties with this, however. Firstly, did Te Rauparaha mean by "Taitapu" the whole of Golden Bay; and did Te Rangihaeata mean by "Whakatu" the whole of Golden Bay?

"Taitapu", the "sacred coast" is not a generic name for Golden Bay. The *New Zealand Historical Atlas* shows "Te Tai Tapu" as a strip of coast on the West Coast of the South Island immediately to the south of Whanganui inlet.³⁶⁴ This was the area which later became the Tai Tapu Native Reserve, and this, it is reasonable to assume, was the place Te Rauparaha meant.³⁶⁵ There is nothing at all to show that by "Taitapu" Te Rauparaha was referring vaguely to the whole Golden Bay area. In fact he knew perfectly well where Taitapu was. When giving the names of the places in the South Island to which Ngati Toa laid claim to E J Wakefield Te Rauparaha gave them precisely, and in order: "Taitap, Wanganui, Onetana or Cape Farewell, Pakawao, Takaka, Taomiti, Motueka, Waimea, Okatu, Okapuerka [Wakapuaka]".³⁶⁶ The list differentiates the West Coast names (Tai Tapu, Whanganui, Onetaua) from the Golden Bay names (Pakawau, Takaka). It may be that Te Rauparaha had shifted ground, or that he attempted to repudiate his agreement with the Company, but this is a different point from reasoning that Te Rauparaha did at least agree that he sold "Taitapu", by which he must be taken to have meant the entirety of Golden Bay.

³⁶⁴ *New Zealand Historical Atlas*, pl. 25.

³⁶⁵ The Taitapu block was vested in representatives of Ngati Rarua by the Native Land Court in 1883: see Taitapu case, 15 November 1883, (1883) 1 Nelson MB 3-11, Judgment at *ibid* 67-8.

³⁶⁶ This is of course the list of names as given in the 25th October and 8th November deeds. It will be recalled that in *Adventure in New Zealand* E.J. Wakefield states in the course of preparation of the deeds "Rauparaha dictated to me the native names of all the places on both coasts to which they had any claim, whether by conquest or inheritance". Geoff Park has also noticed Te Rauparaha's "geographically perfect sequence from the West Coast to Canterbury": Park, *Nga Uruora*, 239-40.

Nor, by the same token, is there any reason to suppose that by "Whakatu" Te Rangihaeata meant the entire Blind Bay (Tasman Bay) region. There is no reason to believe that Te Rangihaeata's geography was any vaguer than Te Rauparaha's. If he had meant the whole area Te Rangihaeata would probably have used the place name "Waimea" (the name in Te Rauparaha's list) or perhaps Te Tai-o-Aorere (the Maori name of the bay).³⁶⁷

The second problem is the sleight of hand by which Spain converts "or" into "and". Te Rauparaha said that Taitapu was sold; Te Rangihaeata that Whakatu was. Spain concludes that *both* were. But this is obviously problematic, as the two chiefs clearly had conflicting understandings of what they thought they were agreeing to.

The third problem is of a different kind, and relates to Spain's broader analysis. He begins by denying that Ngati Toa could have any rights by mere conquest ("mere conquest, unsupported by actual occupation...bestows no title on the invaders"³⁶⁸ - and thus Ngati Toa's true interests were in the Wairau and in Queen Charlotte Sound); and yet he at the same time uses the supposed sale of Whakatu and Te Tai Tapu by the Ngati Toa chiefs as one of the reasons for giving a grant to the Company. In Spain's view Ngati Toa apparently simultaneously do, and do not, have rights in the Upper South Island outside Wairau and Te Hoiere. Mitchell has analysed Spain's report on the basis that he "he found *for* Ngati Toa in one provincial area of Te Tau Ihu, the Wairau, and *against* them in another - in Whakatu."³⁶⁹ But it is not quite that simple, as Spain sees the Company's title as in a sense derived from that of Ngati Toa.

(ii) In addition, says Spain, "the *resident* Natives were subsequently paid over again". This relates back to some points he made earlier at greater length in his report when referring to two quite separate earlier events, these being (a) Wakefield's distribution of 'presents' to the local Maori people in October 1841, shortly before the settlement at Nelson Haven; and (b) the three releases organised by Clarke in August 1844 (i.e. the Motueka, Wakapuaka and Ngati Awa releases).³⁷⁰ In effect, as well as Ngati Toa's consent, the Company's entitlement to a grant was based on the fact that the local people had been paid *twice* for their lands.

³⁶⁷ *New Zealand Historical Atlas*, pl. 25.

³⁶⁸ *Ibid*, at Mackay I, 55.

³⁶⁹ Mitchell, *History*, 2, 8/73,

³⁷⁰ There was a fourth deed of release signed on 3 or 23 May 1846 for £290. A copy of this is on MA 13/51, WNA. The circumstances of this deed are explained in a report by Tinline to Richmond of 18 December 1855, *ibid*: "All these lands were included in Mr Spain's award to the New Zealand Company, and the disputing Natives acknowledge having received their share of the goods which were distributed to the different tribes in Blind Bay and Massacre Bay, but they ground their present claim upon their not having participated in the money which was apportioned by Mr Spain for Massacre Bay. That money £300 lay for some time in Nelson after Mr Spain had held his court, - the natives refusing to accept it, as they considered it too small a sum. At length on the 10th November 1845. the principal chiefs of Massacre Bay who had come over to Nelson signed a paper agreeing to receive the amount awarded, and amongst these chiefs was Te Meihana as representative of the Takaka Natives. At the request of the Natives the money was taken over to Motupipi by Mr Fox the Agent of the New Zealand

In regard to (a), the distribution of 'presents', Spain had nothing but praise for Wakefield's actions:³⁷¹

It is impossible to deny to the memory of Captain Wakefield the tribute of praise so justly due for this liberal and judicious policy, and it is to be regretted that a similar course had not been adopted in other districts on the like occasions, in which case I feel persuaded that that much of the opposition which in other settlements has so severely retarded the colonists would have been obviated or removed.

Of course Captain Wakefield had not drawn up any deed with the local people, on the basis that the Company already had title to the area deriving from the supposed sale by Ngati Toa. The Company was merely making a *gift*, not a *payment*. Spain thought this was a little over-subtle, however, and in this he was undoubtedly right. Both Ngati Toa *and* the local people had rights which had to be extinguished, although Spain would not have quite put it that way. Spain writes:³⁷²

At the same time it may be remarked that the distinction thus sought to be drawn between a further payment for land and a present was somewhat too fine-drawn for the conceptions of the Natives, and I think Captain Wakefield carried his assumed position too far in claiming the land under a purchase from the conquerors only, and not admitting, to some extent, the title of the Natives whom he found in actual possession.

Although this was not the Company's intention, in fact the Company was in fact in Maori eyes making a payment:³⁷³

I was satisfied from all the evidence that the Natives had always looked upon the transaction with Captain Wakefield as an alienation of their rights and interests in the land treated of; more particularly as it appeared that they had at the time stipulated for the retention of a certain portion of a large wood at Motueka, as well as the retention of their pas and cultivations; and I found that the conditions, as regarded Motueka, had in a great measure been complied with, by the allotment into Native reserves of a considerable portion of the "Big Wood" in that district.

Company accompanied by Mr Sinclair the Chief Police Magistrate at Nelson, the Revd. C L Reay the Revd John Aldred and myself. The money was paid over to the Natives there assembled and a Deed taken on the occasion a copy of which is attached."

³⁷¹ Ibid, at Mackay, 56.

³⁷² Ibid.

³⁷³ Ibid.

While Spain is right in seeing that the title of the local people required separate extinguishment, it is of course very doubtful whether Wakefield's gifts in 1841 actually had that effect. Fortunately this point does not directly impinge on Ngati Toa and can be left to others to analyse.³⁷⁴

In regard to (b), the payment of Clarke's releases in 1844, Spain waxed almost lyrical: in view of such generosity and solicitude for their rights, what could Maori possibly complain of? This too is a point which other historians will not doubt engage with; and the only point that it is necessary to make here is that none of the money went to Ngati Toa.

(iii) The third reason why the Company should get its grant is on the basis of *acquiescence*. "To the occupation by the Company's surveyors and settlers in these districts," Spain noted, "no opposition had been offered, up to the date of the sittings of my Court at Nelson, by the original selling parties." As he goes on to discuss in the next sentence the opposition to surveys at Wairau and Porirua by the "same parties", by "original selling parties" Spain must be referring to Ngati Toa. And this seems to be quite true - Ngati Toa never did object to the New Zealand Company surveys at Nelson, the Waimea Plains and so on, or complain about the Pakeha settlers there. The question is, however, whether it is legitimate to deduce from this that Ngati Toa accepted that their rights in the entirety of the Nelson and Golden Bay districts had been wholly extinguished.

The sting in the tail of Spain's report as far as the Company was concerned were the reserves. Spain's recommendation was that the grant should exclude (a) a "true" tenth of all the land so granted; and (b) "all the pas, burying-places, and grounds actually in cultivation by the Natives".³⁷⁵ The reason for the two categories of reserve is clear. "Tenths" land was to be a kind of endowment, which was to generate income for the original sellers and which was a critical aspect of the whole compensation package. To get its grant, the Native title had to be fairly extinguished, and the endowment of one-tenth was a core part of that "fairness" as it were. *Actual* occupation was supposedly protected by the separate reservation of pas, burying places and cultivations.³⁷⁶ Ngati Toa could not have shared in the latter category unless they could show actual residence and occupation at the time. But as original sellers, or "original selling parties" it seems reasonable to assume that in Spain's view Ngati Toa were entitled to at least some interest in the Nelson Tenths. Or at least it can certainly be argued that as Spain

³⁷⁴ See e.g. Phillipson, *Northern South Island*, 79.

³⁷⁵ John Mitchell refers to the two categories of reserve as "tenths reserves" and "occupation reserves": Mitchell, *History*, vol 2, 8/65. He states that the latter were eventually surveyed to be about 3,565 acres.

³⁷⁶ One consequence of this, Mitchell argues (correctly in my view) is that existing tenths reserves which were in actual occupation should have been redesignated as "occupation reserves" which "should then have been replaced by re-allocating other "European" sections (Crown or Company-owned) to make up the Tenths acreages": Mitchell, *History*, 2, 8/67. Mitchell has shown that the first, but not the second step, was taken.

rested the Company's entitlement to a grant partly on the basis of an extinguishment of Ngati Toa's title, a Ngati Toa interest of some sort in the "Tenths" can be plausibly argued on the basis that the "Tenths" reserves were a part of the compensation for extinguishment.

E. Exclusion of the Wairau Region

Spain was not, however, prepared to recommend a grant of the Wairau district to the New Zealand Company. Although the New Zealand Company had surveyed sections at the Wairau it made no effort to defend a claim to the Wairau in the Commissioner's Court, evidently to Spain's astonishment. Te Rauparaha and Te Rangihaeata for their part had denied they had ever alienated this area to the New Zealand Company, and Spain saw no reason to doubt them. Wakefield had not helped his case declining to give any evidence on the Wairau block.

I am now come to speak on the subject of the Wairau. This district is mentioned in the deeds already referred to, but, your Excellency has seen by what I have said concerning Rauparaha's evidence, was never admitted by that chief to have been sold to Colonel Wakefield, nor was any particular testimony given on the subject before me at Port Nicholson. I was naturally very anxious on this subject when I opened my Court at Nelson, and certainly did not anticipate that it would be passed over entirely without any evidence being offered on the subject.

4.11 Old Land Claims

As has already been explained, Commissioner Spain did not only enquire into the New Zealand Company transactions. He also investigated and reported on a number of Old Land Claims – that is, to say, other pre-Treaty private purchases – made in the Cook Strait region. These claims included the Cooper-Holt-Rhodes claims at Cloudy Bay and Kapiti,³⁷⁷ three claims made by Thomas Evans at Kapiti,³⁷⁸ a claim by William Mayhew to areas at Banks Peninsula, Kapiti Island and Mangawai,³⁷⁹ and the claim by Joseph Thoms to his whaling station at Paremata.³⁸⁰ Spain heard evidence on these claims as well, and reported on them in March 1845.

These pre-Treaty purchases were yet again examples of the standard practice of entrepreneurs on colonial frontiers of gaining weak equitable interests in land by means of “purchases” from indigenous groups which could then, with a bit of luck, be converted into “strong” legal titles in the form of Crown grants following annexation. Such practices were standard on North American colonial frontiers, and the New Zealand Company transactions

³⁷⁷ OLC 1/5 [Nos 128-9].

³⁷⁸ OLC 1/8 [Nos 185-7]

³⁷⁹ OLC 1/927-931

³⁸⁰ OLC 1/986-988.

were examples of the process on a colossal scale. I have considered the background to the Old Land Claims process fully elsewhere.³⁸¹

Daniel Cooper, James Holt and William Barnard Rhodes were Sydney merchants who claimed that they had purchased all of Kapiti Island from “Robulla, Rangiatam Rangihere, Akie, Echo and Tunia” on 31 October 1839.³⁸² The purchasers claimed to have purchased not only the whole island, but “all Buildings, whaling stations, and right of whaling in adjacent waters”. (In fact the whaling stations on Kapiti were operated by other Europeans.) The consideration for this was said to be £1 15s., paid in cash, and goods worth £250 14s. 6d, using the standard formula employed in the Old Lands Claims process (by which the value of goods purchased at Sydney was multiplied by 3 to give New Zealand values).

Ngati Toa admitted receiving this payment, but according to Spain’s report “most positively denied the alienation of the land”. Spain nevertheless concluded that some sort of transaction had happened³⁸³, and awarded the claimants 688 acres.

The Evans claims were more modest. Evans claimed areas at a place called “Rangitira, or Rauparaha’s Point” and at Motungarara (“known by the European name of Rangi Eroa’s [Te Rangihiroa’s] Island”). Spain found that Evans had not produced sufficient evidence for the claim at Rangitira to be determined (there being no deed³⁸⁴), but accepted the Motungarara claim and found that a grant should be made to it.³⁸⁵

William Mayhew also laid claim to land on Kapiti, which he claimed to have purchased from “Wiwi and Topeora”, paid for in goods worth £150 (Sydney values). Te Rauparaha gave evidence admitting this claim.³⁸⁶ He said that he and Te Rangihaeata had

³⁸¹ R P Boast, *Surplus Lands: Policy-Making and Practice in the Nineteenth Century*, Research Report Commissioned by the Waitangi Tribunal, 1992 (Wai 45 Doc#DF16). For full discussions of the OLC process see D Moore, B Rigby, M Russell, *Old Land Claims*, Waitangi Tribunal Rangahaua Whanui Series, First Release July 1997; Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, 1997, pp 109-135. The *Muriwhenua* Tribunal was highly critical both of the Land Claims Ordinance of 1841 and of the Inquiry process: see *ibid*, 393-5.

³⁸² See the Duplicate Deed on OLC 1/5.

³⁸³ Report by Spain, 31 March 1845, OLC 1/5. Spain states here:

The evidence, however, of “Olivia” the Daughter of a deceased Chief of high Rank corroborated as it is by Rhodes and Cole, and coupled with the admission by the Native Sellers of the receipt of the payment induced me to come to the conclusion that a bona fide purchase was made. The well known character of Rauparaha and Rangiaiatata however hold out a very slight prospect of the Claimants being permitted to occupy the Land even if they obtained a Crown Grant of it.

³⁸⁴ Report by Spain, 31 March 1845, OLC 1/8.

³⁸⁵ See Report by Commissioner Spain, 31 March 1845, OLC 1/8 [Claim 186].

³⁸⁶ See Transcript, on OLC 1/927-31):

Rauparaha, not being a Christian and is not sworn.
Examined by W Hansen Sol.

received some of the payment (which was entirely in rum, pipes, sugar and tobacco). He said he was “vexed” by Topeora and Wiwi entering into this transaction, but that “Topeora persisted, and we let them do it”. This claim was also accepted by Commissioner Spain, who determined that Mayhew should receive a grant of 1125 acres. This claim had a complex aftermath, which will be dealt with fully in the chapter on Kaipiti Island in Report No. 2.

Finally, there was Thoms’ claim to his whaling station at Paremata. This was a modest claim for about five acres. As well as using the place as a whaling station Thoms had built a substantial house at Paremata. Thoms, gave evidence to Spain on 11 May 1843, as did Te Rauparaha, Te Rangihaeata and two other Ngati Toa people, “Aki”, who seems to have been the principal vendor, and “Muriwenua”[?]. Te Rauparaha and Te Rangihaeata both said that they knew Thoms, that they were satisfied with the payment, and that the boundaries stated by Thoms were correct. “Aki” testified that Thoms had paid for the land with 3 casks of powder, 3 muskets, 4 blankets, shotguns (“a double barrelled fowling piece”), rum and so forth – the usual commodities in these kinds of transactions, seemingly. Thoms was of course well known to Ngati Toa and had married into the iwi, and this transaction does not seem to have been controversial as far as Ngati Toa were concerned. Spain determined that Thoms should receive a grant for 4 acres, 3 roods and eight perches at Paremata, and recommended as well that standard limitations relating to foreshore boundaries be dispensed with in Thoms’ case, given that the land was used as a shore whaling station.³⁸⁷

The above-mentioned Land having been purchased expressly as a whaling station, and deriving its value entirely from its capabilities of its water frontage for the general purposes of whaling, the Commissioner recommends that the exception of “100 feet from high water

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- Q. Do you know of a place called Warikohu and did it belong to Wiwi and Topeora?
A. Yes, it belongs to me and Rangihaeata – [ill.] two people – the one is Rangihaeata’s sister and the other is a boy.
Q. Do you remember when Mr Williams was at Kaipiti?
A. Yes.
Q. Do you remember at that time any payment being made to Wiwi and Topeora by Captain Mayhew, and did you X [sic] Rangihaeata get any part of it?
A. Yes.
Q. Can you state what goods were given by Captain Mayhew in payment, and what portion was received by yourself and Rangihaeata?
A. Three casks of tobacco, 3 bags of sugar and two casks of Rum and 1 cask of pipes. Rangihaeata and myself got a Cask of Tobacco each, and a bag of sugar each, and I got the cask of pipes and the Rum. Topeora and Wiwi divided it up.
Q. [Gives boundaries.]
A. Yes those are the boundaries.
Q. You were present at the time this Deed was signed by Wiwi and Topeora?
A. I did not see it.
Q. When did you first become acquainted with the Purchase?
A. When they paid the property.
Q. Did you at that time make any objection to it?
A. We were vexed – but Topeora persisted, and we let them do it.

³⁸⁷

Spain, report of 31 March 1845, OLC 1/986-988.

mark” should be dispensed with in the present case; as such a reservation would deprive the claimant of the principal advantage which he endeavoured to secure by the acquisition of land hereby awarded.

However Thoms’ claim was complicated by the fact that his house and whaling station lay within one of the New Zealand Company’s surveyed country sections. Thoms’ whaling station provides a useful case study in the complexities that the Company’s arrogant allocation of country sections at Porirua without reference to Ngati Toa or Pakeha settlers could cause. As has been explained elsewhere in this report, Thoms was greatly disliked by the New Zealand Company settlers for his role in the Wairau Affair – he had transported Ngati Toa across Cook Strait in his vessel *The Three Brothers* – and the magistrates at Nelson had seriously contemplated trying to prosecute him. This may have caused some difficulties for him behind the scenes. Sections 80 and 81 at Porirua (which included Thoms’ whaling station) were allocated by the Company to Samuel Evans, who mortgaged them in 1844 and then sold them in 1847, without reference, needless to add, either to Thoms himself or to Ngati Toa. Spain’s award to Thoms was not approved by Governor Grey until 12 July 1852. Thoms meanwhile got into debt, and was sued by one N Lewyn for payment in respect of a bill of exchange and two promissory notes in the amount of £1224 11s 11d.³⁸⁸ In part settlement of this Thoms transferred the land at Paremata to Lewyn, who – as a result of other complicated bills of exchange and promissory notes – entered into various other arrangements in turn relating to the property in turn with one G Hart.³⁸⁹ Another complication was the Government’s own claim to land at Paremata for military purposes. By 1871 title to Thoms’ former property at Paremata still had not been settled, and it was finally dealt with by means of a final process of resolution of outstanding claims left over from the New Zealand Company at that time. The Company representative – the Company itself having been wound up years before – waived all claims, and Commissioner Domett allocated Thoms’s station to Lewyn. Domett’s report is as follows:³⁹⁰

Report and Order: The land at Paramatta Point, Porirua District, in the Province of Wellington for which application has been made by Robert hart Esq., Solicitor of the said Province on behalf of Representatives or Assigns of the original claimant, forms part of the Claim... made to certain lands in the District by Joeph Toms [isc].

Mr Commissioner Spain having heard the said Joseph Thoms, and having received evidence in respect of the said portion of claim No 986 recommended – 31 March 1845 – that a Crown Grant of 4acres 3roods 8perches of the aforesaid land be issued in favour of the

³⁸⁸ See “Extracts from Conveyances”, n.d., on *ibid*.

³⁸⁹ See *ibid*.

³⁹⁰ Report and Order by Commissioner Domett, In re Joseph Thoms (deceased), 8 March 1871.

aforesaid Joseph Thoms – which was approved – 12 July 1852 – by His Excellency Sir George Grey Governor of New Zealand at that time.

The said recommendation now being before me, and documentary evidence of the transfer made by the aforesaid Joseph Toms to Newton Lewyn of Cloudy Bay, whaler, having been produced before me, and the New Zealand Company's Land Claims Commissioner having certified that the claim to the Land at Parramatta Point aforesaid "is not affected by a Purchaser from the New Zealand Company at the present time"; -

It is accordingly hereby directed that, on payment of the proportion of the fees due in Claim No 986, a Crown Grant of 4 acres 3 roods 8 perches of land at Paramatta Point aforesaid be made according to the Plan of Survey made by Thomas Fitzgeralds Suurveyor dated 5 June 1843, and issued to the said Newton Lewyn of Cloudy Bay whaler or his legal representatives.

4.12 "You will take such much measures for the relief of the Company as it may be in your power to adopt": Fitzroy's Wellington and Nelson grants and their aftermath, 1845-6

Spain completed his deliberations in March 1845. He concluded (as seen) that the New Zealand Company was not entitled to a Crown grant at Porirua, but that it was entitled to grants at Nelson and at Wellington.³⁹¹ With regard, firstly to Wellington, Spain found that the New Zealand Company was entitled to a grant of 71,900 acres, made up of 708 100-acre country sections and the town land of 1100 acres. From this had to be deducted the town and country tenths sections allocated to Maori and the existing pa, cultivations and burial places (it is basic to an understanding of the process that these two categories of reserved lands were quite distinct). The Waitangi Tribunal noted in its *Te Whanganui a Tara* Report (2003) that the lands recommended to be granted were the same as those agreed upon on 8 February 1844 between Wakefield and Protector Clarke, and that the schedule to the Clarke-Wakefield agreement was "the same as the schedule which formed part of the various deeds of release signed by Maori".³⁹² As the Tribunal also noted, although the March 1845 report finally marked the end of Spain's interminable inquiry process at Wellington, "the position of the Maori reserves was far from settled".³⁹³ There were two main problems:

(a.) While Maori had been allocated their full entitlement of urban allotments under the 'tenths' scheme (110 sections), only 39 rural sections had been allocated. The Waitangi Tribunal found that Maori never were allocated their proper share of rural 'tenths'

³⁹¹ Spain's final report to Fitzroy, 31 March 1845, BPP vol 5, pp 12-26.

³⁹² Waitangi Tribunal, *Whanganui a Tara*, 183.

³⁹³ Ibid.

sections. The Tribunal has calculated that there was a shortfall of about 31 rural sections, a deficiency which was never made good.³⁹⁴

(b.) A much more serious problem was that the paha, cultivations and burial grounds had not been surveyed off (this was the case at Nelson and at Port Nicholson), and as a result no one could say how substantial these areas were. In its *Whanganui a Tara* report the Tribunal was critical of the Crown's failure to survey off the Maori cultivations etc.³⁹⁵ And, it can be added, had it done so then much further trouble in the Hutt Valley might perhaps have been circumvented.

Despite the fact that the cultivation etc. areas were still not clearly defined, Fitzroy went ahead and issued Crown grants to the New Zealand Company for Port Nicholson and for Nelson on 29 July 1845. Both the Nelson and Wellington grants stuck to the letter of Spain's findings. Both grants excluded 'tenths' allocations to Maori *and* paha, cultivations, and burial places. The Nelson grant, at 151,000 acres, was by far the larger of the two.³⁹⁶ It excluded "all the paha, or burial-places, and grounds actually in cultivation by the Natives" and *also* "all the Native reserves marked up on the plan hereon endorsed and coloured green – the entire quantity of land so reserved being one-tenth of the 151,000 acres of land granted to the said Company". The Wellington grant granted to the New Zealand Company "all that parcel of land...said to contain 71,900 acres, more or less' at Port Nicholson. Excepted from the grant, as at Nelson, were the separate categories of 'tenths' reserves, and the paha-cultivations-burial reserves.³⁹⁷

The grants, however, and especially the Wellington grant, were of course not acceptable to the New Zealand Company. In fact, Wakefield refused to uplift a copy of the Wellington grant. The New Zealand Company, checkmated in New Zealand, turned instead to

³⁹⁴ See Waitangi Tribunal, *Whanganui a Tara*, 184:
The company scheme allowed for 110 town reserves of one acre each in and around the Lambton Harbour area. These were reserved in the deeds of release along with 39 rural tenths reserves of 100 acres each, or 3900 acres. The total area of tenths reserved in the deeds of release awarded by Spain amounted to 4010 acres. This left a shortfall of 3090 acres from the 7100 acres (say, 31 rural sections) which should have been reserved as Maori tenths.

³⁹⁵ Waitangi Tribunal, *Whanganui a Tara*, 184.

³⁹⁶ The Nelson Crown grant of 29 July 1845 is in Mackay, I, 68-9.

³⁹⁷ The grant excepted (enclosed with Fitzroy to Stanley, 1 August 1845, BPP, vol 5, 213):
All the paha, burial-places and grounds actually in cultivation by the natives, situated within any of the said lands hereby granted to the New Zealand Company as aforesaid; the limites of the paha to be the ground fenced in around the native houses or huts, including the ground in cultivation or occupation around the adjoining native houses or huts without the fence, and the cultivation being those tracts of land which are now used by the natives for vegetable productions, or which have been so used by any aboriginal natives since the establishment of the colony; and also excepting the 39 native reserves of 100 acres each, and the 110 town acres, which said reserves for the natives are shown upon the plan endorsed hereon; and excepting the two other native reserves of 100 acres each.

its friends in the House of Commons in London, who were very prominent in the Whig opposition to Peel's Tory government. As it happened, political events in the British Isles were to prove propitious to the New Zealand Company and its supporters, who embarked on a programme of attacking the government's New Zealand policy in parliament and doing their best to have Fitzroy recalled. In this they were largely successful, forcing the colonial secretary (Lord Stanley) to shift ground

Thus while the complicated drama was playing out in the Cook Strait region, there were a series of important developments in London. These were, in brief:

- The House of Commons Select Committee Report on New Zealand (29 July 1844). This took a strongly pro-New Zealand Company stance.³⁹⁸ With respect to the Wairau the report stated that "it appears that the expedition in question was undertaken for a purpose believed by the parties to be lawful and desirable, and which also, example in analogous cases had unfortunately led them to expect might be effected without resistance from the Natives".
- The three-day debate on New Zealand affairs held by the House of Commons on Charles Buller's motion in June 1845. The debate focused attention on the NZ Company and its affairs, and following it Lord Stanley commenced negotiations with the Company for *another* New Zealand Company Settlement (Otago).
- Stanley's decision to replace Fitzroy with Grey and also to send Major McCleverty to New Zealand to assist the Company with the selection of its land at Wellington. Grey arrived in New Zealand on 14 November 1845.
- Finally, in 1846, the Tories lost office to a Whig government led by Russell. This regime was very supportive of the pretensions of the New Zealand Company.

It seems that Fitzroy's recall was a direct result of New Zealand Company pressure. The Wakefields and their supporters were unhappy with Fitzroy not only because of the terms of the Wellington and Nelson grants, but also because of his refusal to take revenge on Ngati Toa for the Wairau incident. According to Patricia Burns:³⁹⁹

The reasons given by Lord Stanley, in his despatch of 30 August 1845, for Fitzroy's recall, among them the alleged inadequacy of his despatches, seem less convincing today than they were to the Colonial Office at the time. It is clear that the problems he faced – particularly the perennial shortage of money, and the absence of an effective military force – were such that no person could have made a success of governing the infant colony, with its widely dispersed company

³⁹⁸ *Report from the Select Committee on New Zealand, 29 July 1844* (BPP(NZ), IUP ed., vol 2).

³⁹⁹ Burns, *Fatal Success*, 279.

settlements and inadequate communications....What is certain is that the Company settlers had made Fitzroy a whipping boy from the day he arrived in New Zealand. It was their abuse and criticism, culminating in Alfred Domett's brilliant but partisan petition to Parliament, and Charles Buller's devastating attacks in the Commons, to which the Colonial Office had to pay heed. In the memorial asking for the Governor's recall, Domett described the Treaty of Waitangi as 'This unintelligible, universally misunderstood, and repeatedly broken and nullified treaty', and complained of the 'himane kindness'shown the Maori, who required 'the firmness and authority requisite in the management of children'.

Ian Wards thinks it possible that Fitzroy was made a scapegoat for the various problems the New Zealand colonies were embroiled in by 1845:⁴⁰⁰

But the Colonial Office now had to do something, if only to stifle political opposition. Whether it sought a scapegoat, or whether it was, consciously or unconsciously, trying to sweep the slate clean so that a fresh start could be made, remains a matter of doubt.

Following Fitzroy's decisions to issue grants validating the New Zealand Company's Wellington and Nelson purchases (29 July 1845), the Company, unhappy about the terms of the grant, complained to the Tory⁴⁰¹ politician W E Gladstone.⁴⁰² Essentially the Company believed that Fitzroy was wrong to exclude the tenths reserves *and* pas, cultivations and so forth from the terms of the grant. In a key memorandum of 21 March 1846 Gladstone then directed Governor Grey to assist the New Zealand Company.⁴⁰³ In this crucial document Gladstone stated:

I have to request that you will inquire and ascertain whether the reports which have been made by the Company's Agent afford such a representation of the whole state of the case as to leave you no cause either to controversy or qualify any part of it: and should you find that representation complete and accurate, you will take such much measures for the relief of the Company as it may be in your power to adopt.

Ngati Toa and Porirua in late 1845

Following the Wairau affair fortifications had been constructed at Port Nicholson and in the Hutt, and the settlers remained concerned about Ngati Toa's intentions. But despite that, there

⁴⁰⁰ Wards, *Shadow*, 168.

⁴⁰¹ At that time. Gladstone of course switched to the Whigs and became the 'Grand Old Man' of the Liberal party.

⁴⁰² T C Harrington to Gladstone, 28 February 1846, Mackay, I, 69-70. I am not certain what Gladstone's ministerial position was at this time. The Secretary of State for the Colonies was Lord Stanley. Gladstone may have been parliamentary under-secretary.

⁴⁰³ Gladstone to Grey, 21 March 1846, Mackay I, 69.

was no overt hostility shown towards the Pakeha settlers by Te Rauparaha. Travellers freely travelled through Otaki and Porirua on their way to Wellington from other parts of the country. William Williams passed through the area in November 1845 and his journal entries give a picture of tranquility.

At this time Te Rauparaha was living at Otaki, and this is where where Williams met him on 6 November. Everything at Otaki was calm, even moderately prosperous:⁴⁰⁴

The natives here [Otaki] have a very civilised appearance having it in their power to maintain many good clothes which they much value. There are many here also who have embraced christianity and they shew in their conduct that a blessing has attended Mr. Hadfields instructions among them. Old Rauparaha soon came in to see me. He will be remembered as one of the principals in the sad affair at Wairau. Since that event he has been an attendant upon Mr Hadfields ministrations and certainly apart from that circumstance he is a very fine specimen of the native chief.

Te Rauparaha courteously invited Williams to stay for a few extra days. Williams did so, and the next day Te Rauparaha came over to see him, bringing with him Tamihana Te Rauparaha and some other people.

He [Te Rauparaha] says he has had experience of evil in every shape among the natives of battle sieges and murders, but that now he wishes to know something about christianity.

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". Williams was also impressed by the large congregations who came to hear him preach at Otaki and Waikanae. On November 11 he travelled across the Wellington peninsula via Porirua. By this time there were settlers living on their selections on the Porirua road. No settler, nevertheless, were to be found at this time until about six miles from the southern end of the Porirua harbour (which indicates that those expelled from their sections by Rangihaeata in 1842 had made no effort to return).

Pulled up the Porirua river in a canoe until we came to the beginning of a road which has been cut through the wood to Wellington. At a distance of about six miles we came upon some of the settlers houses which continue at intervals for the distance of another six miles. They are in a romantic district very wild and rugged, and the labour which has been spent in clearing the timber and cultivating the soil is immense.

⁴⁰⁴ Frances Porter (ed), *Turanga Journals*, 355.

Williams paints a peaceful scene, but there is other evidence to show that relations between the West Coast tribes (Ngati Toa, Ngati Awa and Ngati Raukawa) and the settler community at Wellington continued to be tense. The fortifications described in the previous paragraph is one example. It also appears that Te Rauparaha and other chiefs feared for their physical safety at Wellington and preferred not to go there. When Grey sent H.T. Kemp across to Porirua in early 1846 with his reply to a letter sent to him by Te Rauparaha and other chiefs, he found that the chiefs were only willing to visit Grey on condition that their personal safety was guaranteed.⁴⁰⁵ Later in 1846 in the midst of the fighting in the Hutt Valley Te Rauparaha offered to visit Wellington but Major Last thought "that there is such a hostile feeling against him by all the people that I think it would not be advisable".⁴⁰⁶ While travellers were unmolested at Otaki and Porirua, in other words, Te Rauparaha and Te Rangihaeata preferred to avoid the inevitable unpleasantness that would result in their attempting to visit the town at Port Nicholson.

⁴⁰⁵ Grey to Stanley, 17 February 1846, PP 1846/44, BPP(NZ) 5, 415.

⁴⁰⁶ Major Last to Governor Grey, BPP(NZ) 5, 488.

5 Governor Grey and Ngati Toa: 1845-mid 1846

5.1 Militarisation at Wellington

Following the collision at the Wairau various forts and stockades around Wellington were erected and garrisoned by the New Zealand Company settlers, who feared an attack on the town by Ngati Toa and their allies. In 1845, however, the government was forced to commit such military forces as it had to the Northern War, and had few resources to spare at Wellington. In the course of the year, however, a few regular detachments were moved into the area. In April, following rumours of a planned attack on Fort Richmond (Lower Hutt) Major Richmond ordered 50 men of the 58th regiment to the fort; they were taken to the Hutt from Port Nicholson on the brig *Bee*, and marched up to the fort from Petone Beach, relieving the militia garrison on April 21. Two of the Company's 18-pounder guns were also sent across the harbour and installed in the fort. But it was not until the end of the Northern war in early 1846 that the government was able to move larger military forces into the Hutt Valley. Or rather, the Northern war had led to a build-up of military force which Grey now had at his disposal to employ at Wellington.⁴⁰⁷

An over-emphasis on the various negotiations following the aftermath of the Spain commission at Wellington should not obscure the fact that the principal factor dominating the government's reaction to Maori resistance in the Hutt was military: nothing really could be done until forces could be shipped down from Auckland in 1846. Even Commissioner Spain, as noted, had pressed for a military show of force in the Wellington region in mid-1844. Once the government's hands were no longer tied by the war in the north, it was able to act coercively in the Hutt and at Porirua.⁴⁰⁸

The military buildup at Wellington began in earnest in February 1846. A flotilla of ships, including the naval steamer H.M.S. *Driver* - the first steamer ever to be seen in Wellington harbour⁴⁰⁹ - appeared at Wellington, bringing substantial military forces to the area and immediately shifting the balance of power at Wellington away from Ngati Toa and its allies. This sudden militarisation is described by Cowan:⁴¹⁰

⁴⁰⁷ See Hill, *Policing the Colonial Frontier*, I, 230: "The northern insurrection had led to a large increase in the number of soldiers in the country, 800 by 1 June 1845, and after George Grey replaced FitzRoy in November he secured huge increases in military strength. Following the cessation of hostilities after the occupation of Kawiti's Ruapekapeka pa, Grey arrived in Wellington in February 1846 with more than 500 troops to crush resistance in the south..."

⁴⁰⁸ The details in this paragraph are mainly based on the narrative in Cowan, *NZ Wars I*, 98-99.

⁴⁰⁹ Geoffrey Swainson ed., *William Swainson: Naturalist and Artist: Family letters and diaries 1809-55*, 1992, p. 115.

⁴¹⁰ Cowan, op.cit., 99-100. A number of historians have emphasised the importance of Grey's ability to divert troops southward after the conclusion of the Northern war: see Miller, *Early Victorian New Zealand*, 94; Burns, *Te Rauparaha*, 268. According to Burns:

As soon as it was possible to withdraw troops from the Bay of Islands preparations were made for a transfer of the military forces to Wellington, and on the 3rd February, 1846, a body of nearly six hundred men under Lieut-Colonel Hulme embarked at Auckland for the south. The fleet which transported them consisted of the British frigates "Castor" and "Calliope," the war-steamer "Driver" - which had just arrived from the China Station - the Government brig "Victoria," and the barque "Slains Castle." Inclusive of a detachment of the 99th Regiment, lately arrived from Sydney in the barque "Lloyds," the following was the detail of the force: 58th Regiment - one field officer, two captains, six subalterns, and 202 non-commissioned officers and privates; 99th Regiment - one field officer, two captains, six subalterns, and 250 non-commissioned officers and privates; also a detachment of Royal Artillery.

The excitement created by the opportune arrival of so large a body of British soldiers, bringing the total force of redcoats in Wellington up to nearly eight hundred men, was heightened by the novel spectacle of a steam-vessel. H.M.S. "Driver" was the first steamship to visit the port; she was a wonderful craft to many a colonist, and amazing to the Maoris, who congregated to watch the strange *pakeha* ship driven by fires in her interior, moving easily and rapidly against wind and tide.

In the circumstances of colonial New Zealand, this was an impressive show of power, and it is impossible to imagine that the implications of the new situation were not lost on someone as astute as Te Rauparaha. Governor Grey was himself in no doubt that the arrival of military forces on such a large scale had decisively transformed the situation at Wellington. Grey contrasted the situation which had prevailed until 1846, "when the British authority was neither recognised nor could be enforced at the distance of only a few miles from the town" with that after his - and the military's - arrival:⁴¹¹

If we now consider how far the arrival of Her Majesty's naval and military forces in the southern portions of New Zealand has altered this state of things, we find that British authority has been so far enforced that the intruding natives have been expelled from the Hutt, and that the coast-road in the direction of New Plymouth has been opened by the establishment of a post at Porirua, which post also enables the Government in some degree to protect the rear of the Port Nicholson settlements. So large a force is now assembled in this part of the country that the Government may, when proper police regulations have been established, enforce its laws and its authority throughout a considerable tract of country, and thus give confidence to the well-disposed natives who may naturally hitherto have distrusted the ability of the Government to protect them.

Grey brought with him 500 regular troops and a detachment of artillery. Both he and Richmond hoped that a display of force might suffice to convince the Maoris that they could only lose against British might.

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Grey to Stanley, 22 April 1846, enclosure No 3, BPP (NZ) 5, 465-7.

Clearly firepower and manpower on this scale was far more than was necessary to chase small groups of Maori cultivators out of the Hutt Valley. The community at Wellington until 1846 had been essentially a civilian community of settlers. Now there was a formidable Crown military presence. There was also another factor: a young and determined governor determined to eliminate Ngati Toa as a political and military force.

5.2 “The key to the Wellington district”: Grey's programme:

Grey arrived in New Zealand on 14 November 1845, but did not come to Wellington until early February 1846. He is, of course, a controversial figure.⁴¹² There are different assessments of him by historians. Ian Wards, while noting Grey's “unquestionably great gifts” goes so far as to see him as a liar,⁴¹³ and while this may be rather harsh, such a verdict by such an able historian must at the very least mean that Grey's official despatches should be read with a certain amount of caution. Octavius Hadfield got to know Grey well (Grey often consulted him about Maori affairs in the Wellington region); Hadfield thought Grey “clever” but “not very talented”, a major misjudgement.⁴¹⁴ To the settler community at Wellington the arrival of the Governor and his wife and the Crown's military forces were at first very welcome. The beleaguered Wellington settlers, who had loathed with passion the gloomy and censorious Governor Fitzroy, regarded by them as too partial by far to Maoris and missionaries, at first responded with enthusiasm to Grey, a young and decisive governor seemingly determined to put Maori in their place. (They were eventually to become disillusioned with Grey in his turn.) On Thursday 19 February a Ball was given at the Assembly Rooms at Barrett's Hotel. Grey, his wife, and his entourage of military and naval

⁴¹² The most interesting recent reassessment is in Mark Francis, *Governors and Settlers*, Canterbury University Press, 1992, 221-9. Francis' discussion, although illuminating, is too brief to allow a full consideration of Grey's native policy. Francis writes that efforts by some historians to see Grey as unscrupulous, devious and despotic are overdone (see *ibid*, 225). Francis notes that Grey was “one of the few nineteenth-century governors to surmount the ethnic divide between ceremonies within the British community and those intended for the consumption of native inhabitants” (226). It is possible to accept much of this, and to recognise Grey's genuine scholarly interest in Maori traditions and cosmology, while at the same time deploring Grey's blatantly illegal actions with regard to Ngati Toa. This seeming inconsistency is less than it may seem when it is realised that Grey was not a free agent, but was under specific instructions from the Home government to assist the New Zealand Company settlers.

⁴¹³ See Wards, *Shadow*, 391.

⁴¹⁴ Hadfield letter (to his brother), 13 April 1846, typescript WATL:

I have seen good deal of our new Governor Captain Grey. He is a very clever man but not a very talented man. He is very honest, unprejudiced, and desirous of doing good, but not possessing very much decision of character or much judgment. His intellect is rather acute than comprehensive, and more prone to see analogies than differences in things, and rather too ready to jump at conclusions; still, I have a very high opinion of him, and much admire the high moral tone that he assumes which is important in these colonies, where people generally retrograde on that point.

officers were invited. It seems to have been a jolly occasion. *The New Zealand Spectator* describes the scene:⁴¹⁵

His Excellency and Mrs Grey arrived about ten o'clock, when dancing immediately commenced, and was kept up until one, when the supper room was thrown open. After supper the dancing was resumed with great spirit, and the party did not break up until nearly six o'clock in the morning.

One of Grey's early actions was to abolish the Native Protectorate, which had played such an important role in Spain's investigations. Most settlers had little time for the Protectorate: some had long hoped that "this protectorate department will be abolished as a public nuisance."⁴¹⁶ Grey granted their wish. Clarke was eventually dismissed on 1 July 1846. In July 1843 Clarke had proposed a system of Native Courts which would pave the way for the gradual introduction of British law amongst the Maori; Swainson, the Attorney-General, had instead favoured confining the jurisdiction of the legal system only to areas of European settlement.⁴¹⁷ But Grey rejected both Clarke's and Swainson's ideas, and instead favoured Maori becoming immediately subject to British law. He proceeded, in Wake's words, with⁴¹⁸

... the imposition of British institutions on the whole country. With increased finances and a reinforced army Grey was able to crush the Maori rebellion, repeal the Native Exemption Ordinance, and re-establish the principle that Maoris were amenable to the ordinary courts of the country.

On 16 February 1846 Grey wrote to Te Rauparaha, telling him that "Maori and Europeans shall be equally protected, and live under equal laws",⁴¹⁹ the laws being, however, as Burns notes, "entirely those of the Europeans".⁴²⁰ Legal and political pluralism was definitely not part of Grey's vision.

With respect to Wellington, Grey had quite specific plans and a specific timetable. It is not clear exactly when Grey formulated it, but it was certainly in place by April 1846. The first, and immediate, step was to secure "military possession of the country round Port Nicholson, included by a line drawn from Porirua to the upper Hutt"⁴²¹. This then had to be followed up with the establishment of an armed police force. (The boundaries of the

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⁴¹⁶ *Auckland Times*, cited in *New Zealand Spectator*, 28 February 1846.

⁴¹⁷ For a full discussion of these competing policies, see C.H. Wake, "George Clarke and the government of the Maoris", *Historical studies: Australia and New Zealand*, vol 10, 339, 353-55.

⁴¹⁸ Wake, *op.cit.*, 356.

⁴¹⁹ Grey to Te Rauparaha, 16 Feb 1846, IA 46/799, NA, Wellington; also BPP (NZ) 5, 417.

⁴²⁰ Burns, *Te Rauparaha*, 271.

⁴²¹ Grey to Stanley, 22 April 1846, enclosure No 3, BPP (NZ) 5, 465-7.

Wellington deed, it must be stressed, meant nothing to Grey: his programme was not one of resolving the complexities of land titles and reserves but of actively extending the Crown's power outwards from Wellington.) Grey, ever the strategist, believed that "Porirua is the key to the Wellington district, being the point through which the roads from all the other settlements pass to that place".⁴²² In the winter of 1846, Grey believed, the Crown should "confine itself to holding possession of Porirua and the upper Hutt, as its extreme military posts". Meanwhile it was essential that a road be built from Wellington to Porirua, if not further: "every exertion" must be made "to construct a good line of road from Wellington to Porirua, and, if possible, as far along the coast as far as Wai-nui" [Paraparaumu]. The following summer the Crown forces could break out of the Wellington-Hutt-Porirua area into the Horowhenua region and beyond:

Efforts must at the same time be made to enforce British authority within the same limits; to strengthen our alliances along the coast in the direction of New Plymouth; to accustom the natives to, and to inspire them with a respect for, British laws and usages; to choose proper sites along the coast for military and police stations: so that when at the commencement of the next summer we break out into the open country beyond Wai-nui, we may be able at once to afford an efficient protection to the settlers inhabiting that tract of country...

As well as being committed to subjecting Maori to British law, Grey favoured a universal reduction of the whole of the country to the authority of the Crown. In Grey's view, "it is not sufficient that the Government should merely conquer, and remain in possession of certain portions of it [New Zealand]".⁴²³ The army could not be relied on to control the country permanently. Military action had to be followed up by policing.

It also seems that Grey had quite specific plans to obtain Ngati Toa land at Porirua for the purposes of settlement. It appears that by April he had discussed this with Colonel Wakefield and had promised Wakefield he would obtain land at Porirua for the New Zealand Company. The diary of F. Bradley, small farmer and bootmaker, contains the following entry for May 4 1846:⁴²⁴

I met in with Colnl Wakefield & he told me that the governor has promised to get them Porirua but he said he believed all the land would be got very shortly as the new commissioner was coming out & I said Mr Spain (our late commissioner) had acted the Part of a very bad man and he said he had.

⁴²² Grey to Stanley, 7 April 1846, BPP (NZ) 5, 450.

⁴²³ Grey to Stanley, 22 April 1846, enclosure No 3, BPP (NZ) 5, 465-7.

⁴²⁴ Bradley diary, Ms 63, ATL, 4 May 1846.

In a report made to Earl Grey in 1847 Grey explained that it had been essential to obtain the Porirua area in order to satisfy the claims of New Zealand Company settlers to land there, and also in order to make the Wellington settlement secure:⁴²⁵

The land claims which appeared, in the circumstances of the Colony, to require immediate adjustment were those advanced by the New Zealand Company: - Firstly, to the district of country, including Porirua, and lying between that place and Wairau [sic - Wainui?]. Secondly, to the district of Wairau...In both of these districts the Company had actually disposed of land to European settlers, whom, of course, it was desirable to place in possession of the sections they had purchased; and moreover, in a military point of view, the possession of a great part of the Porirua District, and its occupation by British subjects, were necessary to secure the town of Wellington and its vicinity from evil-disposed Natives, as it was only by occupation of the Porirua District that the various tracks leading across the woody mountains which lie between Porirua and Wellington could be effectually closed against an enemy.

5.3 Armed Police

In his magisterial *Policing the Colonial Frontier* Richard Hill has emphasised Grey's commitment to an Irish-style armed police force as a key part of his coercive programme in the Wellington region. Grey had spent six years' army service in Ireland, and although he had certainly been shocked by the poverty and inequalities of Ireland⁴²⁶ he also, in Hill's words, "had been impressed by the efficacy of a militarised police in imposing unpopular rule upon large, turbulent sectors of a subject population".⁴²⁷ Grey had instituted an Irish-style armed police force in South Australia during his tenure as Governor and strongly favoured the establishment of an armed police force in New Zealand. Grey was especially dismayed by the absence of any effective policing at Wellington.⁴²⁸

The Governor required, besides fighting bodies, a specialist police to complement his military forces, a force raised on his authority alone. Only an armed police-force of professional soldier-policemen could fulfil in the short and medium terms the several functions which he had in mind. The existing Police Magistracy system's inability to cope with these functions was revealed in February 1846 when Grey arrived in Wellington with 500 troops to present that show of force against the Maoris for which Superintendent Richmond had been pressing. The regional police, he found, consisted of seven constables to 'watch a tract of forest country without roads, more than a hundred miles in length, and to control about five thousand

⁴²⁵ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 202.

⁴²⁶ Keith Sinclair, "Grey, George", *DNZB*, I, 160

⁴²⁷ Hill, *Policing the Colonial Frontier*, I, 235.

⁴²⁸ Hill, *op.cit.*, 240.

Europeans, and many thousand Savages', and at most British authority was enforceable only a 'few miles from the town'. The Governor was to change this citation.

The most important document relating to Grey's plans for an armed police is the secret memorandum he sent to Lord Stanley on April 22 1846.⁴²⁹ Here Grey argued that although his military show of force had already expanded the zone of effective British authority around Wellington, it was nevertheless necessary for military pressure to be followed up by an armed police force under civil authority. The main purpose of this new force was essentially to supplement the military units; the armed police would have the functions of "obtaining information, of exploring and opening up lines of communication throughout the country, and of transporting military stores and supplies."⁴³⁰ In stressing the lawlessness of the countryside around Wellington, Grey may have been over-colouring the situation. As seen, an unarmed traveller like Williams was easily able to walk from Otaki to Wellington in late 1845, noting only Te Rauparaha's growing interest in Christianity, the large congregations in the Maori churches at Otaki and Waikanae (Kenakena) and the settlers' houses on the Porirua track, apparently tranquil and unmolested in the dense forest. Grey wanted to proceed to coercively impose British law through military action and armed policing because this was a model of colonial government he was committed to, not because it was actually necessary.

To head his new armed police force at Wellington Grey chose William Durie, a New Zealand Company settler with a military background, close friend of William Wakefield, and an active promoter of the volunteer corps after the Wairau incident and other 'Maori scares'. In 1845 Durie became captain of militia at Wellington. Grey enticed him into working for the Crown, and on 9 April 1846 Durie became Inspector of Police for the Southern District of New Ulster. Durie got busy with recruiting and drilling his men, some of whom were Maori. Durie and his constables were later to play an important part in the capture of Te Rauparaha. Grey formulated his plans for policing the Wellington region in the wake of military conquest. Hill analyses Grey's policing strategy as follows:⁴³¹

The first of the blue-jacketed Armed Police Forces established, Grey now declared his strategy for initiating an 'unvarnished policy of conquest'. Over winter the focus would be to secure and enforce British authority throughout that 'considerable tract of country' south of a line drawn between Upper Hutt and a new military barracks established at Paremata on Porirua Harbour. A total of 65 armed police would operate from 'civil establishments' on the border and southwards from it, their task being to 'to acquire information, to become acquainted with

⁴²⁹ Grey to Stanley, 22 April 1846, enclosure No 3, BPP (NZ) 5, 465-7.

⁴³⁰ Ibid.

⁴³¹ Hill. op.cit., 243.

the Natives, their habits, cultivations, and roads, and more especially to watch over and provide for the safety of the Settlers in the neighbourhood of the Troops.'

5.4 “This troublesome and exciting question”: The Hutt Valley and the formation of Grey’s Ngati Toa policy (early 1846)

A. *Ngati Tama leave the Hutt Valley (February 1846)*

In early 1846 the stalemate in the Hutt Valley existed, in the sense that Taringa Kuri’s section of Ngati Tama and Ngati Rangatahi led by Kaparatehau were still there. Grey decided that a show of force was necessary to make them leave. He sent his thoughts to Lord Stanley in a memorandum sent to the Colonial Office on 12 February, where Grey explained that “the strength of the force at my disposal, and the intelligence of the events which have recently occurred in the northern part of this island, will induce the natives to abandon the valley of the Hutt without offering any further action”⁴³² – an overoptimistic prediction, as things turned out.

In the case of Ngati Tama, however, the strategy certainly worked. Taringa Kuri went to see Grey on 14 February and promised to withdraw from the Valley within a few days. The timing makes it clear that Ngati Tama left because of military intimidation, and not for any other reason. Grey reported to Stanley immediately.⁴³³

...Taringa-kure [sic], one of the principal chiefs of those natives who have intruded into the valley of the Hutt, has just been with me, as a kind of deputation from the other chiefs of that district, and that upon my requiring him to name a specific day upon which the valley shall be evacuated by the natives; he has assured me that all those over whom he has any influence shall quit the land belonging to Europeans upon Tuesday or Wednesday next.

Taringa Kuri then asked Grey for compensation for the “crops, houses & c. which they must leave upon the land”; but Grey told him they were trespassers and declined to make any promises. As a concession he told Taringa Kuri that once the the land had been abandoned “I would receive any deputation of the chiefs, and hear any representations, which they might make to me”. (In fact Ngati Tama were not trespassers, even in terms of the strict letter of Pakeha law, given that cultivations, pas and burial grounds were excluded from Fitzroy’s 1845 Crown grant). Taringa Kuri had to be happy with that, and Ngati Tama duly pulled out of the Valley as agreed, leaving behind them 300 acres of potatoes. By February 17 they had gone.

⁴³² Grey to Stanley, 12 February 1846, PP 1846/48, BPP(NZ) 5, 413.

⁴³³ Grey to Stanley, 14 February 1846, PP 1846/48, BPP (NZ) 5, 415.

To Grey it seemed that his strategy of intimidation had worked. Grey reported to Stanley that:⁴³⁴

...although the question of the occupation of the valley of the Hutt by the natives has not been definitely concluded, it has, however, advanced so far that the whole of the fighting men, who were estimated at 300 in number, have, with the exception of about 20, abandoned the disputed land, and removed their families and properties from it; and as the great majority of the natives in this part of the island are decidedly opposed to any of the intruding natives continuing, as they have hitherto done, to set the laws at defiance, I have every hope that by to-morrow evening this troublesome and exciting question will have been set permanently at rest. Your Lordship may rely upon my omitting no measure of precaution which may suggest itself to me for the purpose of adjusting without bloodshed, a question which, from the most trifling beginning, has been allowed to grow into one of the last importance for the interests of these islands, and I certainly have very strong grounds for hoping that the affair can now be satisfactorily and finally adjusted, without the employment of force...

Perhaps the real significance of these events, however, was that Taringa Kuri and Ngati Tama had reached a separate agreement with the Crown (separate, that is, from Te Rangihaeata and Kaparatehau).⁴³⁵

The Wellington settlers were delighted with Grey's apparent success. The *New Zealand Spectator* exulted:⁴³⁶

At length the intruding natives have left the district of the Hutt. They were peremptorily told to go away or they would be driven off, and being fully informed of the recent reverses of Heki [sic] and Kawiti, seeing also that resistance to the force brought against them was hopeless, and being convinced that the Government is now *in earnest*, they have abandoned the district without an effort and, as we are informed, have expressed their readiness to submit their claims to the arbitration of the Governor.

“No time should be lost”, the *Spectator* opined, “in pulling down their Pa, so as to leave them no excuse for returning”. The *Spectator* also took this opportunity to contrast Grey's “decided course” with the weakness and vacillation of the Fitzroy regime. The *Spectator* also hit out at

⁴³⁴ Grey to Stanley, 17 February 1846, PP 1846/48, No. 13, BPP (NZ) 5, 20.

⁴³⁵ Ballara, “Te Rangihaeata”, *DNZB* 1, 490; “Te Kaeaea”, *op.cit.*, 456: “By May 1846 Grey had successfully detached Te Kaeaea and Ngati Tama from Ngati Rangatahi. Their immediate needs were met with 300 acres at Kaiwharawhara and with monetary compensation for their crops. Te Kaeaea was got out of the way by sending him on a visit to Auckland”.

⁴³⁶ *New Zealand Spectator*, Feb. 21 1846.

the Wellington local government headed by Major Richmond, who was stigmatised as indecisive and much too pro-Maori.⁴³⁷

The West Coast chiefs write to Grey

The arrival of Grey and his actions in the Hutt was a matter of real concern to Ngati Toa. There must have been a meeting of all the West Coast chiefs at Ngati Toa's Taupo pa, as it was from there that a letter was sent to Grey, signed by (amongst others) Te Rauparaha, Nohorua, Rawiri Puaha, Matene Te Whiwhi, and Tamihana Te Rauparaha of Ngati Toa, Wiremu Kingi and Riwai Te Ahu of Ngati Awa and Te Whatanui of Ngati Raukawa. (Te Rangihaeata, significantly, did not sign it.) According to the official translation:⁴³⁸

Friend, the Governor,

We salute you. We are now living in considerable uncertainty; we are living in considerable anxiety in reference to your intentions, as to what they really are; this was not the case formerly when our friend and guide Mr Hadfield was dwelling in the midst of us; we used to hear what your (the Government's) intentions really were; then our minds were free from anxiety, and however frequently it may have been said to us by white persons, "Your land will be forced from you, you will be destroyed," or expressions of like character have been used, Mr Hadfield used at once to say, "Regard not these expressions." whereupon our irritable feelings became calmed. Therefore, our request to you now is, that you may be pleased to provide for us some friendly adviser who shall be able to understand both our customs and those of the white people, that he may constantly explain to us the laws of the Queen; we are anxious that the laws of the Queen should be firmly and permanently established among us; that by that means we may be raised to a more enlightened state, for we have already ministers of God teaching us the laws of God.

Grey advised Lord Stanley that the chiefs were in accord with his own strategy of universal application of British law, although his own report does suggest that Grey himself wondered

⁴³⁷ See *ibid.* The *Spectator*, which can probably be taken to be fairly representative of settler opinion at Wellington, also complained incessantly about the allegedly favourable treatment Maori received from the government (some things never change, it seems); see *ibid.*: "No time should be lost in bringing under the notice of His Excellency the great absurdity of some of the exceptional laws in favor of the natives. A glaring instance of it exists in our town...The Police Magistrate is strictly enforcing the provisions of the Raupo Ordinance, and a poor man, whose cottage is not merely detached, but at some distance from other buildings, is compelled, under a yearly penalty of £20, to expend money in altering his roof from thatch to shingle...but the native warres [sic], composed wholly of tohi tohi, reed, and other inflammable materials in the pachs of Pipitea, Kumu Toto and Te-aro, surrounded by our largest buildings and stores in three different parts of the town, are allowed to remain in their original state of filth and danger."

⁴³⁸ Te Rauparaha and others to Grey, 19 January 1846, PP 1846/48, BPP (NZ) 5. 416-17.

whether he was only being told what he wanted to hear.⁴³⁹ This cannot now be determined. That the chiefs wanted to know what Grey's plans were, however, is not surprising. The arrival of the new governor with a massive military force would only naturally have given them reason for concern. The main thrust of the letter was in fact a request for an independent adviser to replace Hadfield. He had clearly won Ngati Toa and Ngati Awa's trust as an independent and reliable counsellor.⁴⁴⁰

God's laws and the law of the governor

Grey was opposed to any kind of legal or political pluralism in New Zealand. He brought to his governorship a deep conviction that Maori and Pakeha should be ruled by the same law - British law. The chiefs of the three tribes seem, however, to have made the mistake of assuming that the law Grey was talking about, in Maori, "te Ture" (the Torah) was God's law, the law of the new Christian dispensation. Grey favoured a unitary state under secular British law; he was, as Mark Francis has demonstrated, a committed evangelical Christian⁴⁴¹, but his vision for New Zealand was not directly linked with propagating the Gospel. But this seems to have been how the chiefs read his message: "we are anxious that the laws of the Queen should be firmly...established among us; that...we may be raised to a more enlightened state, for we have already ministers of God teaching us the laws of God.."

This connection is more apparent in a subsequent letter sent by Wiremu Kingi and the Ngati Awa on 21 February. Here the assumption that the Queen's law and God's law were the same is manifest.⁴⁴²

This is our deliberation. We have decided that the natives of the faith should hearken fully to the law of the Queen, which proceed from your mouth, from the Governor. Leave us below

⁴³⁹ Grey wrote to Stanley (Grey to Stanley, 17 February 1846, PP 1846/38, BPP (NZ), 5, 416) that "I have quite satisfied myself that this letter is entirely their own production, and that the idea of addressing it to me originated with themselves, and that it was written at a distant native village, where they were not in communication with Europeans. It, however, accorded so entirely with my own known and recorded views, that I entertained in the first instance some suspicion, that it might have been an artful piece of flattery, written with some ulterior object. Subsequent events, however, convinced me, that it was written in complete sincerity."

⁴⁴⁰ Hadfield was ill in Wellington at this time.

⁴⁴¹ See Mark Francis, *Governors and Settlers*, 224-5. Francis notes that the clergy in New Zealand, including the CMS missionaries, were supportive of Grey: they saw him as "a true evangelical who shared their fears that the settlers were hostile to Maori interests". While Francis may be right in arguing that many historians have uncritically accepted the criticisms made of Grey by colonial politicians, in my view Francis has painted much too roseate a picture of Grey. Grey was intelligent, genuinely interested in the Maori people, an enlightened man in many respects, and a gifted scholar. But he could certainly be very devious on occasion, as his handling of the Wairau and Porirua purchases demonstrates. Here it is not all hard to demonstrate that Grey was saying one thing to Ngati Toa and quite another, for official consumption, to the Colonial Office.

⁴⁴² Wiremu Kingi et al to Grey, 21 February 1846, PP 1846/38, BPP (NZ), 5, 20.

under the regulations of the Queen and yourself. Let a good regulation be commenced, that the faith may grow among us; that we may not profess faith in God, while we are reverting to error, because there is no one to use the scourge; that our race, the native people, may grow; and that we may forsake our evil customs, great quarrels and little quarrels, such as taking away land, removing land-marks, robbery, murder, and very many other of our customs among ourselves. Now this is our consideration; it is for your good customs to beat down our evil customs, with the help of God, that the work left for us may be the cultivation of provisions for the life of the body, and the faith of Christ for the life of the soul. It is for you, and the ministers of God, to make these evil people grow (in good), that they may grow; then they will hearken to the truth, to the Queen, to the Governor, and to the minister.

The connections made here between the law of God and the Crown's law could not be more explicit: “evil customs” are to be given up so that there may be cultivations for “the life of the body” and the Christian faith “for the life of the soul”. The letter specifically equates “the truth, the Queen, the Governor, and the minister”.

We know that Grey wondered whether the chiefs were dissembling and telling him what they knew he wanted to hear, but it is more likely, judging by the texts of the letters, that he and they were talking about different things. The chiefs had in mind enlightenment and an end to internecine discord through accepting the truths of Christianity; Grey was speaking the language of political and legal subjugation, of the sovereignty of the Crown and the universal application and enforcement of British law. This confusion of ideas and language seems to have persisted for some time, and may have been a factor that led to Mihanere (Christian) chiefs such as Rawiri Puaha thinking selling land to the government served to contribute to the establishment of peace and the furtherance of the Gospel. To the leaders of the tribes, Grey's language of the Law and his obviously coercive behaviour in the Hutt Valley must have seemed bewildering, a puzzling set of attitudes very difficult to decode (no wonder Te Rauparaha and the other chiefs felt they needed an independent adviser). It was Te Rangihaeata who saw through the rhetoric to the coercive assertion of sovereignty which lay behind it, and who determined to resist. It was Ngati Toa's tragedy to be divided at this critical moment.

Crown forces move into the Hutt Valley (February 1846)

The events in the Hutt demonstrate a key political problem caused by the New Zealand Company's system of allocating allotted surveyed sections to individual settlers. The surveys not only took no account of where Maori were living and cultivating; they also created a permanent pressure group of settlers demanding that they be placed on their sections. Their pressure was of course directed at New Zealand Company officials on the spot, particularly

William Wakefield, the Principal Agent at Port Nicholson. In turn the Company put pressure on the Crown to intervene to chase Maori off or do whatever was necessary to put the settlers on their land.

After Taringa Kuri and Ngati Tama had left the Hutt Valley, some of the settlers tried to move back to their allocated sections, but now found that they were opposed by Kaparatehau and others of Ngati Rangatahi. This caused further fulminations amongst the settler community and in the local press. The Wellington *Spectator* described Ngati Rangatahi as originating from the Upper Wanganui, and named their leaders as Kaparatehau, “commonly called E Pare”, E Horo, Te Kohera, Te Arihi, Papa Ahuapa, Kore, Te Atuta, and Kakaherea.⁴⁴³ They came, said *The Spectator*, from the upper Wanganui to Porirua, and were present with Ngati Toa at the battle of the Wairau. After the battle they “usurped land on the banks of the Hutt under Rangihaeata's sanction”.⁴⁴⁴ *The Spectator* always saw Ngati Rangatahi not only as “usurpers”, but also as acting under the direction of Te Rangihaeata.⁴⁴⁵ The Ngati Rangatahi opposing the settlers were then joined by Taringa Kuri, who returned with at least some of his people.

On Monday February 23 Grey ordered St Hill, the Police Magistrate, to go to the Hutt Valley.⁴⁴⁶

On Monday, Mr St. Hill, the Police Magistrate, went over to the Hutt district in obedience to the instructions of His Excellency, to put the settlers in possession of the land, but they were immediately driven back by the natives, and it was evident that an armed demonstration, and perhaps the employment of force would be absolutely necessary to compel these natives to submission.

Grey now quickly moved military forces into the Hutt Valley. According to Crawford, a British officer who wrote an interesting diary of his adventures:⁴⁴⁷

Feb. 24th. The intruding natives refused to leave the Hutt. I walked up there. The Governor went up and had a parley they still refused to move. He returned to the stockade and ordered the troops to move up. They marched and occupied a potato ground. The artillery and a gun from the *Castor* was ordered up.

⁴⁴³ *New Zealand Spectator*, 28 February, 1846.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*: “a message was sent to Kaparatehau, the chief who has been acting under the directions of Rangihaeata”; there “can be little doubt that these natives are still acting at the secret instigation of Rangihaeata, who is artfully directing their operations, and while he keeps at a distance from the scene of action, is the prime mover and promoter of these disturbances”.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ Crawford Diaries, ATL Ms 1001: 5, 24 Feb 1846.

On 24 February Richard Taylor went to see Ngati Rangatahi and Kaparatehau, and managed to persuade them to leave the valley. They began to reluctantly do so. He describes the discussions as follows:⁴⁴⁸

I found the soldiers in a large potato ground filled with stumps of trees and fallen timber. The place was surrounded by dense forest. I proceeded to the Natives the same evening although it was late. I found from sixty to seventy in the forest about 1/4 of a mile in it. They had their sentinels as well as the soldiers and all had guns with them. The two principal chiefs were absent. I spoke to them for some time. They appeared very attentive and were much pleased with my going to see them, but said they claimed the land and would not leave without a compensation both for it and their crops which are considerable. It was pitch dark when I left. I promised to visit them in the morning and them tell Paratehau and Te Oro to meet me there.

The next morning Taylor returned and met Kaparatehau:

This morning we left to return to the natives. We were with them before eight. Paratehau and Te Oro arrived. They were very attentive and again affirmed they had no desire to fight and if paid for their crops would leave. When I went to them Col. Hulme bid me say if they wanted food they should be allowed to come within the lines and dig up potatoes provided they came unarmed. They appeared to hesitate. I told them I would accompany them, when about twenty men, women and boys jumped up and followed me. On going out of the wood I met Te Karamu and another native. They were also going to make peace if possible. They had just come from the Governor who had arrived on the ground. I spoke to him. He said he would not give them anything until they had left, that if they left quietly abandoned the place he would take their case into consideration and would not suffer them to be losers. I returned bearing the message. They again stated, let a remuneration be given for their crops and they would immediately get up and leave. Tahana, Te Karamu and another earnestly exhorted them to go.

Grey, speaking through Taylor, then in effect threatened violence. A huge crowd of settlers also gathered. Taylor implored Ngati Rangatahi to leave, and, intimidated and isolated, they finally agreed to do so:

I went again to the Governor who said he had no new word but that they should have until noon given them to consider and then if they did not agree he would commence hostilities. Two guns had been got up during the night and a great number of all classes of the settlers had congregated. The Natives at my earnest solicitation at last agreed to go, and they rose up and left. I felt much rejoiced at their doing so and so did the Governor and officers, who knowing

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Taylor diary, typescript, qMS 1987, p 351 of manuscript.

the difficulties of native warfare and the blood that must of necessity be shed, were glad to think such would be obviated by their peaceable departure.

What might have happened had Ngati Rangatahi not left is not difficult to imagine, given Grey's "two guns" and the presence of what seems to have been an angry posse of settlers.

As Ngati Rangatahi were leaving the soldiers and settlers then openly plundered the abandoned Maori homes and cultivations. The troops helped themselves to Ngati Rangatahi's potatoes. Crawford found the soldiers at the Hutt "bivouacked in a potato field" and "men roasting potatoes in all directions".⁴⁴⁹ As the troops came up Taringa Kuri also withdrew:⁴⁵⁰

The Maoris immediately retired before the troops, and their numbers were rapidly thinned by the desertion of Taringa Kuri, and others who had no intention of offering any serious opposition, but who desired to try if the Government were in earnest.

Taylor was distressed to see Maori homes and plantations plundered and vandalised by some of the "low Europeans".⁴⁵¹

I was grieved as I and my native companions went along to notice the low Europeans plundering the native houses of everything they thought worth taking as well as their plantations. I also noticed with sorrow and shame that some of the worthless miscreants had been into the native chapel and overthrown the pulpit and violated even the sanctuary of the House of God.

The behaviour of the British forces as they moved into the Hutt Valley in late February and by the soldier's and settlers during Ngati Rangatahi's partial withdrawal has been highlighted by Wards, who has based his account on Richard Taylor's diary, on the Wellington *Spectator*, and on the correspondence of R.D. Hanson, the Crown Prosecutor. Significantly there is no mention of these events in the official correspondence reprinted in the *British Parliamentary Papers*. Wards describes what happened as follows:⁴⁵²

On 27 February, and as Grey kept such a tight rein on the actions of his military officers it can be presumed according to his instructions, the troops ransacked and burned the deserted Maori pas, a conflagration from which the looted chapel and the stake fences round the graves of the Maori dead did not escape. Apart from any other consideration, and there were many, the burial grounds of the Maoris had been specifically exempted from European occupation by

⁴⁴⁹ Crawford diary, Ms 1001:5, 26 Feb 1846.

⁴⁵⁰ Ibid.

⁴⁵¹ Taylor diary, typescript, qMS 1987, pp 350-51 of manuscript.

⁴⁵² Wards, *Shadow*, 245.

Spain's award and Fitzroy's grant. In view of Kapratehau's promise, made verbally to Grey himself, to accept compensation, and his actual removal, this hasty and ill-considered act put Grey irretrievably in the wrong.

On this point, in my view, Wards is exactly right: Ngati Rangatahi had every right to stay where they were given the terms of the Crown grant. It is impossible that Grey would not have known that.

Ngati Rangatahi's departure, however, then seems to have been countermanded by Te Rangihaeata. On the evening of 26th February Taylor heard a rumour that "Rangihaeata had compelled the natives who had left the Hutt to return".⁴⁵³ Taylor reported this to Grey, who now saw no option but war - but who also felt sickened by what he now had to do:⁴⁵⁴

I called upon the Governor to tell him that I feared Rangihaeata had compelled the Hutt natives to return. He appears very unwilling to shed blood although fearful it must be done and also disgusted with the position he is placed in with the settlers here. He remarked he was more like a bailiff turning the poor Natives from off their pretty little cultivations than a British Governor. He has written to Rangihaeata and so has Mr Hadfield. I am in hopes that restless and wicked chief will listen to them. May it please the Lord to constrain him to live in peace.

This is a very interesting insight into events. Grey was not, to repeat a point made repeatedly in this report, a free agent acting autonomously. He was carrying out Crown policy to protect the interests of the New Zealand Company. Not always was he happy about it.

The fact that Ngati Rangatahi had been ordered to return by Te Rangihaeata is also a point of considerable importance. Te Rangihaeata was not merely backing and supporting Ngati Rangatahi – although he was certainly doing that. The relationship was a reciprocal one. If Te Rangihaeata had obligations to Ngati Rangatahi, Ngati Rangatahi also had obligations to him. And one of those was, as part of a broader strategy, to maintain a Maori presence in the Hutt Valley, to show that Maori could not be easily dislodged from their homes and cultivations, and also maintain Ngati Toa's own position.

It certainly does seem that as far as Te Rangihaeata was concerned there was a fundamental issue at stake. He did not support Kaparatehau's acts of plunder and in fact wrote "an angry letter" to him telling him to give the stolen items back.⁴⁵⁵ But, he said, in a "very civil" discussion he later had with Richard Taylor, if the Governor declined to give some of the land in the Hutt to Ngati Rangatahi, all the tribes "as far as Taupo" would rise against the

⁴⁵³ Taylor diary, typescript, qMS 1987, ATL, pp 351 of manuscript.

⁴⁵⁴ Taylor diary, typescript, qMS 1987, ATL, p 352 of manuscript.

⁴⁵⁵ Taylor, Journal, 2 March 1846, MS 254/04, ATL.

Crown.⁴⁵⁶ What was this fundamental issue? It may have had something to do with the plundering and destruction of Maori property, as Wards suggests, but it does seem that the real issue to Te Rangihaeata was the provision of land for Ngati Rangatahi. They were, of course, his and Ngati Toa's clients, and he was obliged to support them, but that would not of itself explain why all the tribes "as far as Taupo" would feel obliged to take action. It seems most likely that the issue was forcible expulsion from cultivated land. If the Crown was allowed to get away with it in the Hutt there was no telling whose lands and cultivations might be next. That other tribes would become involved was not an empty threat. The Reverend Richard Taylor visited the Ngati Raukawa at Otaki and Ohau in early March. Crossing the Otaki River on 4 March he encountered a party of Maori on their way south to join Te Rangihaeata.⁴⁵⁷ He met a number of other such groups as he travelled north. While preaching near Ohau on 6th March Taylor was annoyed to "hear a large party of the young men singing one of their hakas or war dances"; they turned out to be a "party from Taupo on their way to Rangihaeata".⁴⁵⁸

Maori retaliation (late Feb-March 1846)

In late February-early March 1846 Maori in the Hutt made a counter-move against the Crown by plundering in turn a number of settler homes. In Grey's words:⁴⁵⁹

One body of the natives who, in spite of the remonstrances of the Government, continued to occupy the Valley of the Hutt, came down from the wooded hills, and passing the troops in such a manner as to escape detection, suddenly plundered sixteen or seventeen houses of the settlers, and then suddenly again retreated to their fastnesses.

Significantly, in his official report of this affair to Lord Stanley, Grey gives no indication as to why "the natives" took this step, representing it as the action of "insurgents", but there can be no doubt that this plundering was tit for tat retaliation for the actions of the British forces and settlers at the end of February. The houses themselves were left undamaged, but the settlers were stripped of all their possessions, including stock. Nobody was killed or hurt severely (the *New Zealand Spectator* did claim that the plunderers had "in some cases committed acts of personal violence", but no details are given⁴⁶⁰). The dispossessed Hutt

⁴⁵⁶ Ibid. See Appendix 1 for a full transcription.

⁴⁵⁷ Taylor, Journal, 4 March 1846, MS 254/04, ATL.

⁴⁵⁸ Ibid, 6 March 1846.

⁴⁵⁹ Grey to Stanley, 8 March 1846, BPP (NZ), 5, 457.

⁴⁶⁰ *New Zealand Spectator*, Saturday, 7 March 1846.

settlers then (in Cowan's words) "temporarily without means of livelihood, trudged into Wellington" where they had to be fed out of the public rations.⁴⁶¹

The Reverend Richard Taylor again went to see Kaparatehau of Ngati Rangatahi on March 1, who had no qualms about admitting that he had indeed plundered the settlers and that he would continue doing so due to the injuries he had received at the hands of the Governor.⁴⁶²

I met a number of persons driving away their pigs and carrying their poultry. On enquiry I found the natives had plundered nine families on the Waiwatu (Waiwhetu) and stripped their houses of everything. Soon after I met some of the parties who were in very low spirits and said they had lived peaceably amongst the natives for the last six years and it was only since the soldiers came that it had been the contrary...I proceeded to the bush where the Natives were encamped. Their advanced posts immediately they saw me ran to the main body crying out my name. I was received very kindly by them. I reproved Kaparatehau for his false dealing. He said he had not promised to go, the others had and then broken their word. I then told them of their having profaned the Sabbath in plundering houses. They denied having done so...They told me they had plundered and should continue to do so for the Governor had taken their lands, their crops, their pigs and poultry, that he had plundered their houses and then burnt them and to crown all had burned their church and the fences round the graves of their dead, that he was determined there should be no wakapono amongst them and he took me to the spot where they had reinterred them. They said the soldiers might fight with their dead if they liked (this is a Native custom in war). I told them the soldiers only fought with the living. I reasoned with them but although very civil they were determined not to resign their lands without a struggle. I told them my last words were to listen to the Governor and leave.

Attention should be drawn to the evidence this document provides that many of the settlers believed that their misfortunes were due to Grey's decision to use military force in the valley to drive Ngati Tama and Ngati Rangatahi away. The settlers Taylor saw were "in very low spirits and said they had lived peaceably amongst the natives for the last six years and it was only since the soldiers came that it had been the contrary". Despite the problems with some of the allocated sections it seems that many settlers had lived in the Hutt happily enough for some years and had got along with the Maori people quite well. Even critics of Grey tend to assume that his decisions were, on their own terms, intelligent and decisive, but in fact it can certainly be said that his decision to use armed forces in the Hutt was not only unjust, but was simply counter-productive and unnecessary.

⁴⁶¹ Cowan, *NZ Wars*, 1, 102. Full details of those plundered are given in the *New Zealand Spectator*, *ibid*.

⁴⁶² Taylor diary, typescript, qMS 1987, ATL, p. 353-4 of manuscript (March 1 1846).

Grey and Ngati Toa (March 1846)

Grey thought it too dangerous to counterattack, and tried diplomacy instead. This meant he had to involve Ngati Toa directly. To block off the line of retreat of the Hutt “insurgents” Grey needed the support of at least some of the Ngati Toa chiefs at Porirua, and contacted Rawiri Puaha, then living at Takapuwahia.

Grey explained his strategy to Lord Stanley as follows:

As only one line of retreat was left open to the insurgent natives, which was by a native path, leading through the wooded ranges until it debouched at the head of the harbour of Porirua, distant about eighteen miles from this place, I determined to adopt the plan of threatening to cut off their line of communication with their rear, at the same time that I prevented them from obtaining any supplies of food from the Hutt. I, therefore, at once put myself in communication with one of the friendly chiefs at Porirua, who entered fully into my plans, and upon receiving my communications on the subject addressed me the enclosed letter.

The letter Grey refers to, from Rawiri Puaha, deserves very careful analysis as an important Ngati Toa text dating from this crucial time, albeit one which has survived only in English translation.⁴⁶³ (Grey's letters to Rawiri have not survived.) Rawiri Puaha's letter begins as follows:

Salutations to you - great is my regard for you. Friend, here is my arrangement with you. If we see the arrival of the property about which you wrote, it is right - we shall catch it; but as for this, perhaps we shall not see it - if we see it, we shall bruise them, Sir, and because they are causing evil upon the land, in order that you may turn upon us while they run away, that they may leave the suffering upon a different tribe.

“The property”, it is safe to assume, is the plundered property taken as utu from the settlers' homes in the Hutt. Grey appears to have asked Rawiri Puaha to look out for the plundered

⁴⁶³ Rawiri Puaha to Grey, 3rd March 1846, BPP (NZ), 5, 457-8. Rawiri Puaha was subsequently instrumental in the sale of the Porirua and the Wairau blocks to the Crown in 1847. The Te Kanae manuscript states specifically that Grey “asked Rawiri Puaha and his people to sell Porirua to the Queen” and that subsequently “Sir George Grey asked Rawiri Puaha and his people to give over Wairau, the place where Wakefield and his comrades died, to the queen in compensation for her dead.” (Te Kanae ms., Graham trans., typescript AIML, 17, 18). Along with Matene Te Whiwhi and Tamihana Te Rauparaha, Rawiri Puaha was one of the three signatories to the Wairau deed of 18 March 1847. Rawiri Puaha may be a classic example of a Mihanere chief who felt that the Governor's laws were the laws of Christianity and that there was a moral duty to sell land to the government. Puaha also led a Ngati Toa contingent to fight on the Crown's side in the campaign against Te Rangihaeata in July-August 1846 (see below). On the other hand there is contemporary evidence that Rawiri Puaha's Ngati Toa were also doing their best to minimise casualties during the campaign.

property, assuming that some of it would make its way to the various Ngati pa on the West Coast, and attack the plunderers (but “perhaps we shall not see it”, Rawiri sensibly points out). The rest of the sentence is garbled in the translation, but appears to mean that Rawiri Puaha will do his best to “bruise them” in order to prevent Grey from taking revenge against Ngati Toa: the plunderers have “caused evil” which could lead to Grey's turning "upon us [Ngati Toa] while they run away". This seems like, in fact, the response to a threat: to prove their loyalty, and escape retaliation, Ngati Toa had to catch the plunderers and return the confiscated property: the alternative was an attack.

Rawiri Puaha went on to disavow any connections between Ngati Toa and the Hutt Valley insurgents:

Sir, be upon your guard with that people, the Wanganui; do not suppose we are one people (with them). No, they are our enemies - therefore I consider, What is to be done? What is to be done? But we will watch the entrance of the road - for there is no road over the mountains - no other egress - that they may be extinct.

It seems likely that Rawiri Puaha felt it necessary to disavow a connexion between the plunderers in the Hutt Valley and Ngati Toa because Grey had suggested, or implied, that there *was* a connexion. Rawiri continues:

Friend the Governor, there are two tribes, the Wanganui and the Ngatimaniapoto. They are all our enemies - the cause of their coming near this place is the faith, or rather on account of you, the Europeans; before, they would not have come down - they are a different people - we devoured them - they devoured us.

Rawiri's suggestion is that Ngati Maniapoto's [Ngati Rangatahi's] presence in the Hutt is in some way connected with the European presence at Wellington and with the Christian faith, a statement which is not easy to grasp. Contemporary testimony should not, however, be discarded just because it fails to fit easily into current preconceptions. Perhaps Rawiri means that the presence of Wellington drew the Wanganui-Maniapoto groups south so that they could trade with the new settlements and receive the benefits of the Gospel. Having expectantly moved into the Hutt Valley, well away from the territories of the three tribes, they then found themselves treated as belligerent interlopers to be driven out of the Valley by force.

But Rawiri was, it has to be said, exaggerating when he claimed that Ngati Toa had nothing to do with events in the Hutt Valley. Grey did not believe this, and on this point Grey seems to be right. Rawiri Puaha's assurances are very hard to reconcile with Taylor's

evidence that it was widely believed that Ngati Rangatahi returned to the Valley because Te Rangihaeata told them to.

5.5 “None of the authorities had remembered the terms of the deed”: Martial Law

On March 3rd 1846 Governor Grey proclaimed martial law in the Wellington region. There appear to have been five separate proclamations in total.⁴⁶⁴ It seems likely that Grey did this because of doubts over the legality of driving Maori out of the Hutt Valley. However by his proclamation Grey also put Ngati Toa's villages on the West Coast under martial law as well, perhaps an indication of what his main target was. Cowan writes:⁴⁶⁵

The troops remained inactive on the day of the principal raid (1st March), greatly to the indignation of the civilians. Then it became known that the Governor was undecided whether or not to proceed with hostile measures against the natives. He had been advised by the Crown law authority that he was acting illegally in evicting the Maoris, inasmuch as the grants issued by Governor Fitzroy after the purchase of the valley had excepted all native cultivations and homes. The legal adviser, further, was of the opinion that the natives were justified in resisting such eviction by force of arms.

Captain Grey, however, was not long influenced by this opinion. He quickly made up his mind to protect the settlers at all hazards, and on the 3rd March he issued a proclamation declaring the establishment of martial law in the Wellington District, bounded on the north by a line drawn from Wainui (near Pae-kakariki) on the west coast to Castle Point on the east.

This 'legal adviser' was Hanson, the Crown Prosecutor, who pointed out to Grey that martial law was illegal as the original grant had specifically excepted cultivations in the Hutt Valley. The Reverend Richard Taylor heard from a Mr Nixon that Wellington was in "great confusion",⁴⁶⁶ with several boatloads of outsettlers coming into town from the Hutt Valley, and that the Crown Solicitor, Mr Hanson

had just sent in a Protest declaring Martial law to be illegal up the Hutt that according to the grant made to the Company the very land in question was granted to the Natives. Strange to say none of the authorities had remembered the terms of the deed.

Whether the proclamations of martial law were legally valid is a moot point. To settle the issue an Indemnity Ordinance was later made by the Legislative Council on 14 October

⁴⁶⁴ Grey's Indemnity Ordinance of 14 October 1847 refers to proclamations of March 3 1846; 20 April 1846; 18 July 1846; 18 March 1847 and 27 April 1847.

⁴⁶⁵ Cowan, *NZ Wars*, 1, 102.

⁴⁶⁶ Taylor, diary, Ms 254/04, ATL, 3 March 1846.

1847 which retrospectively validated all actions done by military officers and others under the authority of the earlier proclamations. All officers etc. were “hereby respectively freed indemnified and discharged from and against all actions and prosecutions which they may have been or may become liable or subject to for or by reason or by means of or in relation to any act matter or thing done by any such officer or person by virtue or under the authority of the said Proclamations...

5.6 “The bell has tolled”: Escalation in the Hutt

A. *Events in March 1846*

The same day as Grey’s first proclamation of martial law (March 3) shots were fired in the Hutt Valley. A Maori group fired from the trees at a company of the 96th regiment at Boulcott's farm, two miles north of Fort Richmond. Te Rangihaeata could not have been present, as it is known that on March 3 he had a long conversation with Rev. Richard Taylor. He asked Taylor to write to Grey asking that if only some of the land in the Hutt Valley was set aside for Kaparatehau all would be well: this Taylor agreed to do. Taylor described this interview as follows:⁴⁶⁷

I had another long talk with Rangihaeata. He again wished me to write to the Governor that if he would give up a piece of the land to Kaparatehau all would be well as they did not wish to fight. I therefore did as he wished me. He called us a murdering people. I said ironically Yes his was the good Tribe. He retorted I was a murderer. I answered he was the good man, that we know the good tree by its fruit. I told him God would judge the murderer. He put out his tongue in blasphemous defiance. He said what did he care for God, that he was one himself, that the reason Kawiti was not conquered was that he was a God. This is a general belief, that great Chiefs are Gods, or rather demons. At last I left him.

Clearly Te Rangihaeata was well informed about the fighting in the North and did not accept the Crown's claims of military success at face value.

The firing at Boulcott's was returned, and when Grey heard of it more soldiers were moved from Wellington to Petone and the Hutt Valley. Te Rauparaha also took action, and sent instructions to the coastal tribes to meet him at Porirua.⁴⁶⁸ On 8 March Grey took 160

⁴⁶⁷ Ibid.

⁴⁶⁸ Taylor, Journal, MS 254/04, ATL, 6 March 1846 (see Appendix 1).

soldiers to Porirua.⁴⁶⁹ Te Rangihaeata, however, refused to meet Grey. According to Rutherford:

An exchange of shots between the troops and the insurgent Maoris at Boulcott's farm on 2 March enabled Grey with a clear conscience to proclaim martial law and strengthen the militia...On 8 March, the Governor took up a detachment of 160 troops to Porirua. Te Rangihaeata, fearing that the troops had come to punish him for his part in the Wairau massacre, refused to come aboard the *Calliope*, and Grey had to be content for what it was worth with his statement that he was not helping the Hutt rebels and would not fight unless he were attacked. The troops were encamped near the present Paremata, within a mile of Te Rauparaha's *pa*, and Grey hoped that their presence would be enough to procure peace. The settlers, however, were disappointed with his passive strategy and charged him with indecision and dangerous half-measures.

Te Rangihaeata and Te Rauparaha spoke to Grey's interpreters. They informed Grey that "the enemy had entirely quitted their position upon the hills in the neighbourhood of the Hutt, and had retreated to the to the interior, with the intention of wholly abandoning the disputed lands."⁴⁷⁰

Grey also went out to the Hutt Valley to look things over for himself. All was, as the Ngati Toa chiefs had said, "perfect quiet". By now the settler community at Wellington, initially enthusiastic about the new governor, had started to become disenchanted. Grey, stung by the criticisms from some of the settler community for his supposed indecision, was relieved to find, not far from the army positions, a massive (but abandoned) fortification big enough for a force of 300-400 men.⁴⁷¹

Upon examining this position and the path through the forest which led to it, I felt much gratified that I had not uselessly thrown away the lives of those brave men who have already seen such hard service in this country, by directing that an attack should be made upon the enemy in this position, from which they certainly could not have been dislodged, whilst the loss upon our side must have been very great.

Why it had been abandoned is not clear. Te Rauparaha and Te Rangihaeata seem to have been correct in their statement that Maori forces had withdrawn from the Hutt: they were clearly well-informed as to what was happening. Matters seem to have remained quiet for the rest of March. In late March and early April some settlers began to return.

⁴⁶⁹ See Rutherford, *Grey*, 104.

⁴⁷⁰ Grey to Stanley, March 11 1846, BPP (NZ) 5, 458.

⁴⁷¹ Ibid.

B. *The Gillespie murders and Grey's second military demonstration at Porirua (April 1846)*

Matters then took a much more serious turn on 2 April 1846 when a Lower Hutt settler named Andrew Gillespie and his young son were killed by a raiding-party led by Te Pau of Ngati Rangatahi.⁴⁷² Gillespie was the first settler placed on the land from which Maori had been evicted in March,⁴⁷³ and his killing was clearly intended as a warning. The Gillespie murders were a decisive event, a turning-point, as Richard Taylor recognised when writing to Donald McLean on April 24:⁴⁷⁴

You will have heard of a man named Gillespie and his son having been murdered by some person connected with Mamaku, this has apparently brought things to a crisis. Rangiata [sic] has and party declared his intention of supporting the Hutt natives and has retired with them to some pa 4 miles inland from Porirua. Rawiri Puaha, the Otaki and Waikanae Natives have declared for the Governor and so things remain, no decided step has since been taken by either party...

The Gillespie murders increased the level of tension in the area and led, perhaps not surprisingly, to increased ill-will towards Maori on the part of the Wellington settlers.⁴⁷⁵ Cowan says that the tragedy made Grey take immediate action, but, in fact, the person to take

⁴⁷² Cowan, *NZ Wars*, 1, 102. Te Pau was later found dead in a fortification abandoned by Te Rangihaeata in the Horokiwi Valley: see Crawford diary, MS 1001:5, WATL: "Aug 24th. Heard of further retreat of Rangihaiata [sic] and that Epau the murderer of Gillespie had been found dead in the evacuated pa."

⁴⁷³ Cowan, *NZ Wars*, 1, 102.

⁴⁷⁴ Taylor to McLean, 24 April 1846, Ms-copy-Micro 535, ATL.

⁴⁷⁵ As demonstrated in a letter of Octavius Hadfield, April 13 1846 (typecript, ATL):

Down here affairs are far from settled. Two whites were murdered by two natives here about ten days ago. The murderers are known but cannot be obtained as yet by the government from the party who refuse to surrender them. About 200 are now in arms, but as the government has a strong force here, and nine-tenths of the natives, with Te Rauparaha at their head are in favour of Government, I hope the question will soon be settled, though from want of a proper systematic way of proceeding the Government sadly confuse questions. A native was lately tried for robbery and sentenced to ten years transportation. Subsequently I discovered he was innocent and memorialised the Governor on the subject, and though the matter is not quite settled, I have no doubt...he...will be set at liberty. Six white witnesses swore positively to him and yet he has proved a clear alibi. You may easily imagine the state of feeling existing between the two races which could lead to such prejudice and blindness.

Diaries kept by the settlers show that the Gillespie murders and Te Rauparaha's offer to hand the murderers over to the government were well known. See e.g. Bradley diary (Bradley was a farmer and bootmaker), Ms 63, ATL, 4 April 1846:

A man named Gillispie [sic] & his son were found murdered with there faces very much cut out with a Tomahawke it is suspected by the natives the murder was committed Thursdy evening. This morning the chief Te Rauphara [sic] sent a note to the governor stating that he had caught the two murderers & he was to send somebody for them but not soldiers accordingly about a dozen civilians went.

immediate action was Te Rauparaha. As soon as he learned of the Gillespie tragedy (the next day), Te Rauparaha, doing his best to minimise the risk of a collision with the Crown,⁴⁷⁶ wrote to Grey to tell him he had detained the murderers at Porirua and invited Grey to send a police unit to Porirua to take custody of them:⁴⁷⁷

I have just heard - the bell has tolled. I have heard the Pakeha is killed - murdered clandestinely by a Wanganui native. I heard of it this evening, and chased him to catch him and tie him up - him the man who slew. The people are keeping guard lest he should run away. Friend, let the constables come to tie them, and carry them away there. Let not the Europeans be alarmed - let them come on without hesitation - here we are at Takapuahia waiting...

Te Rauparaha completed his letter with a warning about Taringa Kuri: "Sir, watch Taringa Kuri; let the soldiers watch him." Te Rauparaha's letter was taken to Grey by a settler.⁴⁷⁸ Grey then sent a party to Porirua to pick up the prisoners, led by Symonds and Servantes. When they arrived, however, they found that Te Pau and the other prisoners were no longer available for collection. In Grey's words:⁴⁷⁹

On their arrival at Porirua they found that the party to which the murderers belonged had refused to allow these men to be given up to justice, and had retired towards the interior, with the intention of doing further mischief to the out-settlers; they also ascertained that Rangihaeata, the principal chief at Porirua, appeared determined to support all those who would rob and murder the Europeans; and although he had yet committed no overt act of hostility beyond refusing to permit cattle of any kind to be driven along the road which passes his village, his language and his demeanour are such as to cause just ground for apprehension.

There is no evidence that Te Rangihaeata ordered the Gillespie murders. But he was certainly not prepared to acquiesce in handing the Ngati Rangatahi perpetrators over to the Crown. Rangihaeata met the detachment himself, surrounded by armed men; and the encounter was far from friendly. Rangihaeata "exultingly pointed to one man, not only as the leader of the robbers, [i.e. of those who had plundered settler homes in the Hutt Valley in February] but as

⁴⁷⁶ See Wards, *Shadow*, 249: "Te Rauparaha repeated many times that the offenders were Wanganui natives, and was clearly anxious that the incident should not have local repercussions."

⁴⁷⁷ Te Rauparaha to Grey, 3rd April 1846, BPP (NZ), 5, 461-2. In writing this letter Te Rauparaha, like Rawiri Puaha, stressed to Grey that the Whanganui people in the Hutt Valley were distinct from Ngati Toa: "Wanganui is one river - Kawhia another river; they are different people from ourselves." Te Rauparaha also took the opportunity to warn Grey about Taringa Kuri: "Sir, watch Taringa Kuri; let the soldiers watch him."

⁴⁷⁸ Grey to Stanley, 7 April 1846, BPP (NZ) 5, 459.

⁴⁷⁹ Ibid. Again, Grey drapes what is purportedly a straightforward narrative description with highly tendentious phraseology: "the murderers"; "doing mischief to the out-settlers"; "all those who would rob and murder". There is no evidence that Te Rangihaeata countenanced the Gillespie murders.

a man who had, a few weeks before, violated a European female there;⁴⁸⁰ and had then tauntingly asked, why they were not arrested.”⁴⁸¹ Grey was informed as to what had occurred.

Grey then decided make a major military demonstration at Porirua. A detachment of 300 men were sent round to Porirua by sea, and Grey himself went there on the *Driver*.⁴⁸² Ngati Toa thus suddenly found themselves with three warships, including a steamer, 300 soldiers and Governor Grey in their midst. Not surprisingly there was, writes Grey, much “alarm of my taking an indiscriminate revenge for the murders”.⁴⁸³ By the time Grey arrived Te Rangihaeata and his supporters had gone.⁴⁸⁴ Te Rauparaha went on board the ship to discuss the situation with Grey. He told Grey that about 180 men were determined to support “the murderers” but that the rest of the coastal tribes wanted to see them handed over to the Crown and had taken steps to prevent their escape. Te Rangihaeata himself had left a (presumably sarcastic) message for the Governor “that I could, if I chose, take his defences and his houses, as he had left them for me”.⁴⁸⁵ Te Rauparaha also suggested that Grey write to Te Rangihaeata to reassure him that while the two murderers had to be handed over to the Crown forces, “I had no intention of injuring those who conducted themselves properly”. Grey wrote the letters as suggested, and Te Rauparaha undertook to deliver them to Te Rangihaeata (indicating, if nothing else, that Te Rauparaha must have known where Te Rangihaeata and his force was). As Rutherford writes, “[f]or the moment, Grey accepted Te Rauparaha’s assurances”.⁴⁸⁶ At this time Grey saw no reason to be mistrustful of Te Rauparaha, as he pointed out in memorandum sent to Lt.-Col Hume on 8 April:⁴⁸⁷

This Chief [i.e Te Rauparaha] is I believe anxious to afford the Government every assistance in his power, and if he can be relied upon, he will prove a useful ally. I have myself no reason to doubt the sincerity of his professions, and those who have known him for several years believe him to be sincere. Although various reports are in circulation against the Native Chief Rangihaeata, he has not yet committed any overt acts which would justify the Government in

⁴⁸⁰ This remark of Grey's aside, there is no evidence that prior to the Gillespie murders any physical harm was done to any of the Hutt Valley settlers. It would be interesting to what the Maori word was for the conduct rendered by Grey as "violated".

⁴⁸¹ Ibid.

⁴⁸² See Rutherford, *Grey*, 105.

⁴⁸³ Ibid.

⁴⁸⁴ According to Ballara Te Rangihaeata left because “he had heard rumours that the governor was coming to hang him for the Wairau affair”: see Ballara, “Te Rangihaeata”, *DNZB* 1, 490. Rutherford (*Grey*, 104), writes that “Te Rangihaeata, fearing that the troops had come to punish him for his role in the Wairau massacre, refused to come aboard the *Calliope*, and Grey had to be content with his statement for what it was worth that that he was not helping the Hutt rebels and would not fight unless he were attacked”.

⁴⁸⁵ Ibid.

⁴⁸⁶ Rutherford, *Grey*, 105.

⁴⁸⁷ Grey to Hulme, 8 April 1846, NA-G9, cited Rutherford, *Grey*, 105.

punishing him, but he is undoubtedly a man in whom no confidence should be placed, and whose actions should be watched with apprehension.

Such were Grey's opinions.

Grey now left, leaving behind a small force to observe what Te Rangihaeata was up to and also, if possible, to arrest those who had been responsible for the murders. Lieutenant McKillop was given the responsibility of arresting the accused persons and of capturing any canoes he could find at Pauatahanui, but without provoking an open collision with Te Rangihaeata. McKillop has left a detailed narrative of events at Pauatahanui after Grey and the main force had left.⁴⁸⁸

Upon our arrival [at Taupo], Rangy, and those who had cause to fear, as well as those who had a natural aversion to us, left the coast and proceeded to a pah at the head of a creek, partly surrounded by a small river, marshy ground, and wood [Pauatahanui]: the approach to it was most difficult, the river being too shallow to admit of anything but a light boat ascending it. We had no idea of the strength of this retreat, and every day's delay was taken advantage of by them to secure themselves against surprise. We disembarked the troops we had brought round, and left them on a flat point of land with their tents, which were in a very bad condition, to encamp themselves, and to cut off the communication between Rangy and the natives on the coast, who were supplying him with provisions. The piece of ground on which they were encamped having been tabued, or made sacred, rendered it highly probable that they would be attacked before they had time to fortify themselves, which they did at first by digging a trench round their front, meeting the sea on either side, which protected their rear; but finding that twice the number of men which they could muster would not have filled it, that mode of fortification was abandoned, and a stockade contemplated.

The commanding officer of the troops applied for a boat and a party of seamen to cooperate in carrying out the Lieutenant-Governor's views, which were to cut off, if possible, any canoes endeavouring to get up with a supply of fish to the rebels, as well as to prevent any of their party from leaving their present abode.

C. *Ngati Toa's stance*

Interpreting Te Rauparaha's stance, Te Rangihaeata's, and the position of Ngati Toa as a whole are obviously key questions, but it is very difficult to be certain. Certainly Mihanere chiefs like Rawiri Puaha tried to distance Ngati Toa from the events in the Hutt Valley. Some sections of the Ngati Toa leadership close to Te Rauparaha were keen to develop their links with the Anglican Church and take advantage of the educational opportunities it offered. In February 1846 Tamihana Te Rauparaha, Te Rauparaha's son, and Matene Te Whiwhi, his

⁴⁸⁸ McKillop, *Reminiscences*, 183-191.

son-in-law, with their wives and children, left Wellington for Auckland to be educated at the Bishop's School, an arrangement which may have been mediated to some extent by Grey. In this, both Te Rauparaha and Te Rangihaeata acquiesced.⁴⁸⁹ Te Rauparaha's behaviour generally seems consistent with a genuine desire to prevent the situation from escalating. Octavius Hadfield thought that "nine-tenths of the natives, with Te Rauparaha at their head, are in favour of Government".⁴⁹⁰ Most historians tend to see Te Rauparaha as a force for moderation - which is not quite the same thing as being "in favour of Government". Burns is convinced that Te Rauparaha was genuinely trying to be helpful.⁴⁹¹ Wards sees a consistency in Te Rauparaha's stance: he preferred peace, but did not want an open breach with Te Rangihaeata.⁴⁹²

Te Rauparaha was following a line that was consistent with his behaviour during the protracted negotiations of the previous year, that his preference was for all to live in peace, that he would use the influence he had to this end, but that the final solution lay with Te Rangihaeata whom he would not encourage, but whom he would not himself directly oppose.

Grey, however, was coming to distrust Te Rauparaha. He had been annoyed to find out that some of Te Rauparaha's party who came on board the *Driver* were the same men who were pointed out by Te Rangihaeata as the "plunderers" of the Hutt (which could well mean that some of them were Ngati Toa). It seems certain that Ngati Toa were split, and that something had caused Te Rangihaeata to throw caution to the winds and to oppose the Crown militarily; Te Rauparaha was trying to seek some accommodation and to prevent the situation from escalating. He was nevertheless certainly anxious about and exasperated by the colonial regime's apparently insatiable appetite for land, as shown in a speech he made at Otaki in a meeting with Spain in July 1844.⁴⁹³

Te Rauparaha then spoke, saying yes Mr Spain that may be your disposition toward us, but Government may look at it in another light if so send me word like a gentleman that I may prepare I'll not run away lets have a battle for it. If you beat us you shall have the country and we will be your Servants but don't think you will get it without a struggle, you got Port Nicholson, Nelson (Wakatu), Blind Bay (Taitapu), Q.C. Sound (Arapaowa), Wairarapa, Mana, Porirua, Kapiti and many other places that I conquered with my own hands. Wairau I wanted

⁴⁸⁹ See *The New Zealand Spectator*, 21 February 1846: "Thompson (Rauparaha's son) and his wife, and Martin, his wife (Rauparaha's daughter), and three children, proceed to Auckland by the *Victoria*, to be educated in the Bishop's school. Rauparaha and Rangihaeata, it is said, are peaceably disposed."

⁴⁹⁰ Hadfield letter, 13 April 1846, typescript ATL.

⁴⁹¹ Burns, *Te Rauparaha*, 269.

⁴⁹² Wards, *Shadow*, 251.

⁴⁹³ Edward Meurant, *Diary and Letters*, ATL MS 1635, typescript, unpaginated, 3 July 1844.

to keep for myself. You are still persuing me. What do I see, the Queens Vessel bringing men with guns and chains to take me. Shooting my children and Brother and for what, because I have burnt some wood and grass that was my own and you are not satisfied you still pursue me...If Government persists in persuing me let me know and I will go with a thousand men and meet you at Port Nicholson.

There were, as noted, younger, missionary chiefs at Porirua who saw the Governor as representing the truths of the Christian faith, and Ngati Toa may have split into a conservative, anti-government party led by Te Rangihaeata, and a radical, pro-government party led by the Christian chiefs, with Te Rauparaha somewhere in the middle. This division may have been on kin group lines as well. It is certainly possible that Te Rauparaha was dissimulating, as Grey thought likely, or that Te Rangihaeata and Te Rauparaha had agreed that the safest course was to simultaneously go along with the governor's wishes, or at least try to mollify him, while also preserving some military force in reserve. Te Rangihaeata may also have feared that Grey was coming to arrest him for his role in the aftermath of the Wairau in 1843.⁴⁹⁴ Te Rauparaha and Te Rangihaeata faced an unprecedented situation - a new and unpredictable governor, and a massive display of military force on a scale not seen before. The northern war had resulted in victory for the Crown, as everyone knew; and caution was necessary.

Te Rangihaeata, as already noted, seems to have been regarded as having particular interests in the Hutt Valley. He was quite willing to share the valley with the settlers. According to the *New Zealand Spectator* :⁴⁹⁵

We are informed from very good authority that Rangihaeata is still at Porirua, and is in communication with the intruders at the Hutt. He says that he is not desirous of fighting, and wants to have peace, but he considers that a division should be made of the land, and the boundaries distinctly marked, and if the maories trespass in the future, that they should be punished. He threatens that if hostilities commence in the Hutt, he will immediately join the intruding natives. Rauparaha is at Otaki, and disavows any part in these proceedings, and has sent to Rangihaeata informing him that if he does join these natives in their opposition to the Governor's authority, he does so at his own peril. but Rangihaeata has treated the message with contempt.

The Te Kanae manuscript, the most important Ngati Toa written analysis of these events,⁴⁹⁶ written about 40 years later, takes the stance that Ngati Toa as such were not

⁴⁹⁴ Ballara, "Te Rangihaeata", *DNZB* 1, 490.

⁴⁹⁵ *New Zealand Spectator* (Wellington), 28 February 1846.

⁴⁹⁶ This manuscript was written in 1888 in Maori by Wiremu Neera Te Kanae of Ngati Toa for

involved in the events in the Hutt Valley, and that only Te Rangihaeata “remained alert” because of “his killing the Europeans at Wairau”.⁴⁹⁷ (This Ngati Toa source thus strengthens the possibility that a main reason for Te Rangihaeata's refusal to meet Grey at Porirua was because he was worried Grey planned to arrest him in retaliation for the Wairau.) This action set him apart, as it were; he went to live at Pauatahanui and was then chosen by the Hutt Valley tribes as their leader. Rawiri Puaha and Te Rauparaha, as seen, themselves wrote to Grey disavowing any involvement in the events in the Hutt Valley. Against this, however, there is other evidence which points to a much more substantial involvement than merely providing an able leader in the form of Te Rangihaeata. For example, Grey himself was far from certain as to Ngati Toa's stance.⁴⁹⁸

When, after the departure of Rauperaha from the vessel, I was made aware of these circumstances, I felt compelled either to doubt the sincerity of Rauperaha and his followers, or to conclude that those natives inhabiting Porirua (Rauperaha's own place is Otaki, about 35 miles to the north of Porirua), who were well disposed towards the Government, were so weak in numbers as to be held virtually under the control of Rangihaeata and his party.

As Grey saw things, either he was being misled by Te Rauparaha or, in fact, Rangihaeata was supported by a substantial "party" at Porirua. Grey also was convinced that the "plunderers" in the Hutt Valley had substantial backing at Porirua and always had the option of retreating there. The *New Zealand Spectator* claimed in March 1846 that "settlers who have recently visited Porirua have recognized among the natives there, some of the rebels who have recently been driven from the Hutt".⁴⁹⁹ Elsdon Best believed that Te Rangihaeata sent parties from Porirua to "harass the settlers" in the Hutt.⁵⁰⁰ It was primarily for this reason that he decided to neutralise what he saw as the threat from Porirua by building a fort there and

Hane Te Rau (Jane Brown), one of Te Rau o te Rangi's daughters and Sir Maui Pomare's aunt. In this report the translation relied on is the typescript translation made by George Graham dated 20 April 1948 held in the AIML.

⁴⁹⁷ Ibid, 17. The relevant passage is as follows: "In 1845, there broke out a dispute between the Maori and the Europeans at Heretaunga, at Port Nicholson. The Maori tribes concerned in that conflict were Whanganui and Ngati Rangatahi. Ngati Toa did not interfere in this trouble. Te Rauparaha and his tribe quietly remained here at Porirua. One of the chiefs of Ngati Toa remained alert in those days, this was Te Rangihaeata alone. The reason why he continued on guard was because of his killing the Europeans at Wairau. He remained aloof among the Ngati Toa. They and some other people went to Pauatahanui. When the people who were engaged in fighting at Heretaunga knew that Te Rangihaeata was living isolated at Pauatahanui, those tribes came to him as their leader." But there are difficulties with accepting this at face value. As noted in the text, Grey was convinced that the "troublemakers" in the Hutt received ample support and assistance from Porirua. As also noted, it seems very unlikely that Ngati Rangatahi could have issued a military challenge to the Crown on the scale of the forces employed at Boulcott on their own. It is also clear that when Te Rangihaeata withdrew from Porirua to Motukaraka and then to Pauatahanui he did so with the support of a substantial section of Ngati Toa.

⁴⁹⁸ Grey to Stanley, 7 April 1846, BPP (NZ) 5, 459.

⁴⁹⁹ *New Zealand Spectator*, March 21 1846.

⁵⁰⁰ Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56.

establishing a permanent military garrison. Nor was Grey the only one who was uncertain as to Te Rauparaha's stance. Richard Taylor, writing in his journal in early March, "thought that there can be little doubt that crafty chief is playing false with the Europeans."⁵⁰¹ But as noted above, to convince Grey and Taylor that he was not "playing false" would probably have acquired active military aid against Te Rangihaeata and thus a civil war within Ngati Toa. This was to ask too much.

Ngati Toa seem to have split on very traditional lines, the same divisions that had occurred at the time of Haowhenua and Kuititanga, reflecting Ngati Toa's deep-seated structural ambivalence with many being most closely linked to Ngati Mutunga, Ngati Awa and Ngati Tama but with a key faction of the leadership with very close kin links to Ngati Raukawa. Those of Ngati Toa with kin linkages to Ngati Awa and Ngati Mutunga tended to lean towards the government, perceived, perhaps, by some as a kind of tribal ally of Ngati Awa. Although the transforming effect of the Crown's military escalation of early 1846 is critical to grasping the events of this time, older patterns of fissure and conflict continued to be relevant. The tribes of the region were deeply divided (indeed Elsdon Best believed that had they been able to combine they could easily "have wiped Wellington off the map, and left but the smoking ruins thereof"⁵⁰², but there is no evidence that either Te Rauparaha or Te Rangihaeata had any such intention.) In some respects the campaigns of 1846 were a revival of the Ngati Toa-Ngati Awa-Ngati Raukawa conflicts of the 1830. Te Rangihaeata received considerable support not only from the Wanganui and Taupo tribes, who were kin of Ngati Rangatahi, but from his own Ngati Raukawa kin at Otaki and Ohau. He also, according to Best, sent for aid to Tiakatai, a leading rangatira in the Hawke's Bay region, but this was unsuccessful.⁵⁰³ By March Te Rangihaeata had been joined by "several Natives from D'Urville's Island, Queen Charlotte's Sound, and other parts of the straits".⁵⁰⁴ Those from D'Urville (Rangitoto) would have been Ngati Koata, one of the three main divisions of Ngati Toa. The settler community at Wellington was quite aware of the tensions between the tribes and although Ngati Awa's offer of military assistance was certainly welcome there was some concern that it would lead to Ngati Raukawa involvement on the side of Te Rangihaeata. *The New Zealand Spectator* noted on June 3:

[T]he very alliance now formed with the friendly tribes of the Ngatiawas, however much we approve of it on principle may be turned to our disadvantage; for the emissaries of Rangihaeata will not fail to profit by the time lost by present delay, to revive the old jealousies and feuds existing between these tribes and the Ngatiraukawas, so as to obtain the active

⁵⁰¹ Taylor, diary, MS 254/04, Alexander Turnbull Library, 6 March 1846.

⁵⁰² Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56.

⁵⁰³ Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56.

⁵⁰⁴ *New Zealand Spectator*, March 21 1846.

assistance of the latter tribes; and if those who have the conduct of affairs profess themselves unable with the force at their command unable to quell the rebellion when there are only two hundred men opposed to them, what will be their position if Rangihaeata should succeed in obtaining a reinforcement from these tribes of from six to eight hundred men?

While it certainly does seem as if there was some kind of split or division in Ngati Toa, it also is important not to over-emphasise it. The leader of the pro-government party was Rawiri Puaha, who led a section of Ngati Toa against Te Rangihaeata at Pauatahanui and Horokiwi in 1846. Puaha was nevertheless very careful not to kill kinsmen on the opposite side, and a number of Crown officers - as well as Ngati Awa - were far from certain exactly whose side Rawiri Puaha was on.⁵⁰⁵

Ngati Raukawa were, like Ngati Toa, themselves divided into pro- and anti-government groups, the former connected with the Anglican chiefs. At Ohau Richard Taylor, who had met a number of Raukawa parties heading south to join Rangihaeata in March, heard while staying at Ohau that a large Raukawa party intended to join Rangihaeata, and he worked closely with Christian chiefs trying to prevent them from doing so. Taylor took part in a substantial debate between the war and peace parties, which he describes in his diary.⁵⁰⁶

Immediately after Prayers this morning we held a Council with all the Natives on the subject of the present war with the Europeans. The principal chiefs made some long and excellent speeches. One old man named Paora said if they went they must leave their books behind and give up their Ministers and return to their former evil courses, but said we have forsaken them because we know them to be bad, therefore now having turned to the living God we must remain firm in his service. One chief named Puke made a very long and excellent speech in a very droll and sarcastic tone he alluded to all the reasons urged by the advocates for War and refuted them.... Ihakara a teacher and chief made a very good speech after I had addressed them. He said don't forget this meeting and the day it was held the 9th of March. It is a great meeting and must not be forgotten. He was afraid many had double hearts though they all asserted that there was a Judas amongst them as there was a Judas amongst the Apostles. One only of the opposite party briefly addressed the meeting. He seemed afraid to avow his desire of War. I was much pleased with this meeting as I cannot but think it will have a very beneficial effect on the Natives of this part. They will say as Christians it was their duty to listen to their Ministers and they were determined to do so. I shook hands with some of the

⁵⁰⁵ See the discussion in Wards, *Shadow*, 284-5.

⁵⁰⁶ Taylor diary, 9 March 1846, Ms 254/04, ATL. Taylor described the same event in a letter to Donald McLean on April 3: see Taylor to McLean, 3 April 1846, MS-Copy-Micro 535 WATL: "I held a large meeting at Manawatu on my Return from Wellington which was attended by all the chiefs of that river, the occasion of its being held was that one of their chiefs was going to join Rangihaeata with 30 of his followers, and after a great many speeches all most strongly in favor of sense they determined they as a body would sit still..."

speakers and especially with Puke and told him his speech was a very good one, another said and was not mine a good one, and so on with them all. It appears now that my being not able to administer the sacrament service was ordered by a higher power for good. Had it been administered the week before as was my intention then this week's meeting would not have been held and many would have gone to the seat of War. I have also noticed that whenever the holy sacraments have been administered they are attended with a perceptible benefit to the recipients in confirming their faith and strengthening their good resolutions.

One sees again the readiness of Christian chiefs to accept that the Governor was on the side of Christianity and the Gospel; that those who took up arms in support of Te Rangihaeata would have to leave "their books (Bibles) and their Ministers behind". This is an impression that Taylor certainly took no steps to dispel. Taylor was perhaps too ready to assume that the "Christian" party had carried the day. By early June the *New Zealand Spectator* was reporting that the "rebels" in the Hutt Valley had "received a considerable accession to their numbers from the heathen natives of the Ngatiraukawas dwelling at Otaki".⁵⁰⁷

To make sense of it all is no easy matter. My impression is that there was an actively Christian and pro-Governor party within Ngati Toa led by Rawiri Te Puaha, and another section which adhered to the broad anti-Government coalition that Te Rangihaeata was trying to establish. Te Rauparaha was sympathetic to both camps. Te Rangihaeata did not, however, wish to wipe Wellington off the map or drive the settlers into the sea; he was in fact quite willing to share the Hutt Valley. Although a few settlers were killed (and there is no evidence that Te Rangihaeata was involved in these killings, or approved of them), the level of violence was in fact quite minimal and seems to have been carefully controlled. Both Te Rangihaeata and Te Rauparaha were capable of great ruthlessness on occasion, but the campaigns were not waged ruthlessly. There were no attacks on Wellington itself. Precisely three settlers were killed, perhaps with the object of serving as a warning. The main attack at Boulcott was on an advanced army post far up the Hutt Valley and well to the north of the disputed boundary line at Rotokakahi. Elsdon Best, writing in the early twentieth century, was surprised by the strangely low-key and restricted Maori response but typically explained the limited level of violence as due to Maori lack of energy, an explanation which is not very plausible.⁵⁰⁸

⁵⁰⁷ *New Zealand Spectator*, 3 June 1846.

⁵⁰⁸ Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56: "Considering the bitter hatred that this man [Te Rangihaeata] entertained towards the Europeans, it is astonishing that he did not do more damage. Had he and his hostiles been more energetic they could have stayed the settlement of the Hutt and the Old Porirua Road for some time, nor was there, apparently, anything to prevent them making a night raid on Wellington and practically desolating the district. The country was covered with forest at the time, a forest in which the Imperial troops would have been helpless, but an ordinary thoroughfare to Natives. We may be thankful that these hostiles made so few attacks none of which were followed up, and that so few of our settlers were murdered, for some of the out settlers at the Hutt seemed to have displayed much want of caution, more

D. *Te Rangihaeata moves from Taupo*

It seems that immediately before Grey's arrival in March Te Rangihaeata and his supporters had moved from Taupo pa, first to a new fortified place at Motukaraka on the northern side of the Pauatahanui arm of the harbour, and then to Pauatahanui itself. The fortifications built at Motukaraka were still visible in the early twentieth century. Others remained behind at Taupo. Elsdon Best describes the situation, based on Ngati Toa testimony, as follows:⁵⁰⁹

An old Native of the Ngati-Toa tribe explained to the writer that when the Natives under Te Rangihaeata resolved to make a stand against the whites, they evacuated the Taupo pa at Plimmerton and moved to Motukaraka, on the northern shore of the north-east arm of the harbour, where they erected a fortified place...All of the Taupo folk did not so move, some remained at Taupo; apparently Rawiri Te Puaha's party did so. In after days the irreconcilables of Motukaraka came to the conclusion that the position was an undesirable one, hence they deserted it, and moved up the Pauatahanui stream, where they built a pa on the spur near, and just above, the bridge, which was named Matai-taua, a most appropriate name for any fortified position.

The elaborate fortification of Motukaraka and then of Pauatahanui show that Te Rangihaeata was not at all merely an isolated Ngati Toa leader at the head of a group of Ngati Rangatahi. The fortifications built in 1846 point to large-scale resistance in which a substantial section of Ngati Toa living formerly at Taupo were involved. Major Last inspected the fortifications at Pauatahanui on 2 August, and was impressed with what he saw (although he also observed that the place could have been attacked by artillery placed on a nearby hill):⁵¹⁰

On examining the pah, I found it to be built on a very strong position, having a double row of timber palisades, with trenches and traverses across; about 80 paces long and 85 broad; in the shape of a parallelogram, with flanking defences... There was also a bank of earth thrown upon the scarp side of the trenches, which, owing to the heavy rain, were full of water. The position altogether is a very strong one, and would have been almost impregnable without artillery; but a hill, about 500 yard distant. opposite the front face, commanded it completely. Therefore, had the enemy remained, we might soon have dislodged them with our guns...

so than those of the vicinity of Johnson's clearing on the Porirua road." Best's explanation of "lack of energy" is simply not credible. Although Te Rangihaeata is repeatedly seen in very negative terms by settlers and officials (one of the few who seem to have friendly and amicable discussions with him was Richard Taylor) the actual level of violence was fairly controlled and moderate.

⁵⁰⁹ Best, *Porirua and they who settled it*, n.d., copy in Porirua museum library, p. 54.

⁵¹⁰ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501.

E. Grey decides on confiscation and military occupation

Grey's letters to Te Rangihaeata and the anti-government chiefs were an embarrassing failure.⁵¹¹

This morning about eight o'clock Rauperaha returned on board, bringing messages from the chiefs, who had been using their influence to protect the murderers, that they would not interfere to have them taken up; in fact, their replies were simple evasions. Rauperaha at the same time stated, that no hope whatever existed of surprising these men by a sudden movement, unless a very large force was brought together in order to surround them, and that at present it was quite useless to make such an attempt, as he had no knowledge where the main body was.

Grey then announced to Te Rauparaha his plan to confiscate the land of the "rebels":⁵¹²

I then stated to Rauperaha my intention of taking possession of all those portions of the Porirua district which belonged to, or were claimed by, the disaffected natives; and I further informed him that I should hold the most important point in this district by a military force.

(In fact, of course, there was no "confiscation" as such, as Grey's arrest of Te Rauparaha and the Porirua deed of 1847 made confiscation unnecessary.) As Grey is referring to land at Porirua, it is clear that by this time he had formed the clear impression that a substantial number of Ngati Toa were "rebels" who merited punishment by confiscation. It is possible that there is a connection between Grey's outburst on this occasion and the sale of the Porirua block to the Crown the following year when Te Rauparaha was in custody.

5.7 The Porirua Road and the Paremata Barracks:

Grey wanted a permanent military base near Porirua. Te Rauparaha showed him the most strategically suitable site for a fort, on the northern side of the Pauatahanui arm of the Porirua harbour.⁵¹³ Grey believed, or claimed to believe, that not only Te Rauparaha himself, "but the other natives at the point where we landed, expressed their satisfaction at my determination to occupy the district of Porirua".⁵¹⁴ What the other communities of the area thought about it is not known, and perhaps the implications of a British army base near Porirua were not completely clear to all local Maori. On 8 April had Grey directed Lt-Col Hulme, in command

⁵¹¹ Grey to Stanley, 7 April 1846, BPP (NZ) 5, 459

⁵¹² Ibid [check references]

⁵¹³ The ruins of the fort can, of course, still be seen in the Ngatitōia Domain at Mana.

⁵¹⁴ Grey to Stanley, 7 April 1846, BPP (NZ) 5, 459.

of the British forces in New Zealand, to establish a permanent base of 220 men with “a small detachment of artillery” to be based north of Porirua. Grey also prepared a separate memorandum for the benefit of the officer commanding the base. Here Grey makes it clear that in his view the focal point for Maori resistance to the Crown in the Wellington region had been at Porirua.⁵¹⁵

The boat-harbour of Porirua has, for some years past, been the point at which those natives who were inclined to be troublesome to the settlers and to commit depredations have assembled. It afforded a harbour for their canoes, and a point from which they could penetrate to the rear of the settlements at Port Nicholson and on the Hutt. Lately it has been the point to which all those natives who have been concerned in the murder and robbery of the Europeans have retreated, and where they have met with a friendly reception from the natives inhabiting that vicinity.

Then there was the strategic importance of the harbour crossing:

Porirua is also the point by which all the persons coming from the northern settlements to Port Nicholson must pass, in order to cross the ferry over that river. The natives have recently, in the most vexatious manner, refused to permit either Europeans or natives to pass cattle of any kind over the ferry.

Grey also took steps to construct a proper road across the Wellington isthmus from Port Nicholson to Porirua. On April 21 he wrote to Lieut-Col. Hulme to require military assistance in constructing the road; this was a military project, and the construction was to be supervised by Captain Russell of the 58th regiment.⁵¹⁶ The next day Grey, just before he left for Auckland, wrote to Te Rauparaha about the planned road.⁵¹⁷

My friend Te Rauparaha, I am about to proceed in the Steamer to Auckland, as I have much to do there, but I shall return here again as soon as I can. In order that those Natives who have separated themselves from those men who have committed murders and crimes of so disgraceful a character may feel the advantages of their good conduct I have directed that twenty of them should be offered employment under the Government in examining and making roads. Will you recommend to Major Richmond twenty deserving young men, they shall be paid well for their services. I have left a large force here, and will send more men if they are required. I will be very kind to your children in Auckland, I will make them write to

⁵¹⁵ Grey, Memorandum, 8 April 1846, BPP (NZ) 5, 462.

⁵¹⁶ Grey to Hulme, 21 April 1846, BPP (NZ) 5, 465.

⁵¹⁷ Grey to Te Rauparaha. 22 April 1846, Grey's letterbook, NZMS 227, APL (copy in Burns papers, ATL).

you and send you some present. Do you hold fast to the good part which you have taken up, and let your character now stand forth in its true light. Let all men see that the New Zealanders are good men and incapable of approving such horrible crimes as have been committed in defiance of the laws of God and Man. Do you still strive to make your countrymen redeem their character by giving up voluntarily those Murderers instead of by protecting them, implicating them in themselves in their crimes and in the dreadful punishment which will certainly at last overtake them.

Grey's letter, threatening "dreadful punishment" for those continuing to protect the Hutt Valley "murderers" was probably largely directed at Te Rangihaeata. Having thus, as he thought, settled matters at Wellington for the time being, Grey left Wellington for Auckland on April 22nd, arriving at Government House on the 26th. Taringa Kuri went to Auckland with him.⁵¹⁸

Russell, working through Servantes, then contacted Te Rauparaha and sought volunteers for the road construction work. There was no shortage of volunteers, and a number of men of the Ngati Toa and Ngati Raukawa tribes, most of them either relatives or slaves of Te Rauparaha himself, were soon working on the road on the government payroll. Russell placed Hoani Te Akoro, Te Rauparaha's nephew, in charge of the group of Maori labourers. In a report to Grey sent in mid 1846 Russell wrote favourably of their skills and commitment, especially in bush clearing, and stressed too their value in giving an added sense of security: "the presence of Rauparaha's men working in conjunction with our own is of itself security against interruption".⁵¹⁹ Military stockades were built along the road from Wellington: Clifford's Stockade, Middleton's Stockade, McCoy's Stockade, Leigh's Stockade. When, however, Russell asked his Maori workers to build a stockade at Porirua itself, Te Rauparaha intervened and warned that Te Rangihaeata might revenge himself on their families: "Rauparaha objected on the ground that Rangihaeata would attack and kill their wives". The men stopped work for a few hours to consider this, but then resumed building the stockade; the next day Te Rauparaha withdrew his opposition.

5.8 "Attacked by the rebel natives with great vigour": Boulcott Farm (16 May 1846):

A. The Battle

Grey had hoped that he left affairs at Wellington more or less settled, but this was not the case. For a few weeks everything seemed tranquil enough. On May 10 Grey reported to

⁵¹⁸ Cowan, *NZ Wars*, 1, 105.

⁵¹⁹ Russell to Grey, 8 June 1846, BPP(NZ), 485-6.

Stanley that he had received letters from the civil and military authorities at Wellington “reporting that all is going on there in a very satisfactory manner”.⁵²⁰ Although there is nothing in the official records to indicate that an attack in the Hutt was suspected, it nevertheless appears that such an attack was widely feared by the settlers as there had been a number of warnings, including one by Te Rauparaha himself. A naval party near Te Rangihaeata's pa at Pauatahanui had also been fired on, demonstrating once again the interconnections between events in the Hutt Valley and the West Coast.⁵²¹ Then, just a few days before the actual attack (according to a story told by Tungia of Ngati Toa to Dr Maui Pomare), Te Rangihaeata or Te Mamaku sent a scout to the Tinakori range overlooking the town: here he lit a large fire. This gave the impression that the town was about to be attacked, and some of the forces from the Hutt Valley were brought back into Wellington, which is where many of them were when the main attack in the Hutt came on May 16.⁵²²

The attack was made against a British regular army force of fifty men of the 58th regiment commanded by Lieutenant G.H. Page stationed at Boulcott's farm in the Hutt Valley. This was the most advanced post of the regular forces, although there was a small force of the Hutt militia further up the valley at Taita.⁵²³ The attackers were led by Topine Te Mamaku of Ngati-Haua-te-Rangi (Upper Wanganui) and (possibly) by Te Rangihaeata. (Elsdon Best says the attack was led by Te Mamaku and Kaparatehau.⁵²⁴) There were, thought Page, about 200 men in the attacking force, judging from those he saw fighting and those seen later doing a haka after the battle.⁵²⁵ It will be recalled that when at the end of February Richard Taylor went to see Ngati Rangatahi he found about 60-70 people “in the forest”:⁵²⁶ it

⁵²⁰ Grey to Stanley, 10 May 1846, BPP (NZ), 468. On the period between Grey's leaving for Auckland and the fight at Boulcott's farm on 16 May see Wards, *Shadow*, 168. Wards notes here that while the *Spectator* printed a number of stories about warnings - including a warning from Te Rauparaha himself - of an imminent Maori attack on British forces in the Hutt Valley "there is nothing in the official sources to support these reports". Cowan, however, believes that the possibility of an attack was well-known (*NZ Wars*, 1, 104-5).

⁵²¹ See Cowan, *ibid*:

During the week preceding this attack a general opinion was entertained at the Hutt that some sudden movement was contemplated by Rangihaeata. A naval reconnoitring-party had been fired upon by the hostiles at Paua-taha-nui, and the failure of the authorities to retaliate had, as it proved, emboldened Rangihaeata and his fellow-warriors to launch one of those lightning blows in which the Maori bush fighter delighted. Te Puni's warning and offers of help were disregarded, and even a word of caution from Rauparaha did not seem to stir the Superintendent from his indifference. The Governor was now absent at Auckland (the troublesome Taringa Kuri had gone with him in the "Driver"). Rauparaha, in a letter received in Wellington some days before the attack, stated that when Major Richmond and Major Last were at Porirua during the previous week he said to them, in bidding them to be on their guard against a sudden attack, "*Kei Heretaunga te huaki ai; kia mohio; huihuia atu nga Pakeha*" ("At Heretaunga the assault will be made. Be wary; concentrate the white men").

⁵²² Cowan, *ibid*.

⁵²³ Cowan, 104.

⁵²⁴ Best, *Porirua and they who settled it*, n.d., copy in Porirua museum library, p. 66.

⁵²⁵ Page to Last, BPP (NZ), 5, 483.

⁵²⁶ Taylor diary, typescript, qMS 1987, ATL, pp 343-4 of manuscript.

is very unlikely that by themselves they could have fielded a force of 200. It seems clear that Te Rangihaeata had moved a considerable number of fighting men into the Hutt some time after February. Wards believes that it would not have been possible to field an attacking force of 200 warriors without Ngati Toa participation.⁵²⁷

Cowan is in no doubt that Te Rangihaeata commanded the attack along with Te Mamaku. He gives no sources for this. Wards, however, is not at all sure whether Te Rangihaeata was present at Boulcott's farm and notes, quite correctly as far as I can judge, that "there is no direct evidence" that Te Rangihaeata was there at all.⁵²⁸ The main piece of evidence is the famous bugle belonging to William Allen, killed in the attack; the bugle was later found with Te Rangihaeata's men at Horokiwi, hardly compelling proof of Te Rangihaeata's personal presence at the battle. Ballara is sure that Te Rangihaeata was not present at Boulcott: "at no time did he attack the troops in Porirua or in the Hutt", although, as she also points out, Kaparatehau was "considered to be fighting on his orders, particularly in the manner of the attack on Almon Boulcott's farm on 16 May 1846".⁵²⁹ Best says that although "it was stated that Te Rangihaeata was present at this attack", this "was never made clear".⁵³⁰ Wards, however, is sure that there must have been a substantial Ngati Toa presence at the battle: "Ngati Toa – if not Rangihaeata himself, would be needed in some force to make up the number present – about 200".⁵³¹

The attack came early in the morning of Saturday May 16. The British were at first taken by surprise and four soldiers of an outlying picket were killed. According to Cowan's narrative the shots fired by the soldiers of the picket nevertheless warned Page's main force, who successfully counterattacked with the aid of some men of the Hutt militia.⁵³² The battle, or skirmish rather, lasted about an hour and a half. Page lost six men and four wounded. It is not certain how many Maori died, "for all who fell were carried off, but two were seen shot dead, and ten or more were wounded, some of them severely."⁵³³ Major Last, in command of the British forces at Wellington, quickly brought reinforcements up to Boulcott's farm himself, and found that Maori forces were still firing at the British "from the thick scrub on the opposite side of the river".⁵³⁴

⁵²⁷ Wards, *Shadow*, 267,

⁵²⁸ See Wards, *Shadow*, 267.

⁵²⁹ See Angela Ballara, "Te Rangihaeata", *DNZB*, 1, 490

⁵³⁰ Best, *Porirua and they who settled it*, 67.

⁵³¹ Wards, *Shadow*, 267.

⁵³² See Cowan, *NZ Wars*, 1, ch. 11. pp 104-11.

⁵³³ Cowan op.cit., 109.

⁵³⁴ Major Last to Richmond, 18 May 1846, BPP (NZ) 5, 482.

At this time Captain Hardy came up and several volunteers, when I immediately advanced with my whole force (as far as was practicable) in extended order, and directed a heavy fire of musketry, which drove the enemy back and silenced them.

Alarmed settlers at Wellington heard that "the natives" had come down upon the soldiers in the Hutt Valley "& killed five of them & one civilian (Mr Boulcuts servant)" and that "Bolcut got up the chimney & hid himself & so saved his life".⁵³⁵ The battle and its aftermath are described by Crawford, who notes the general atmosphere of panic that followed at Wellington:

This morning rather before daybreak the troops encamped on the Hutt were attacked by the rebel natives with great vigour. They succeeded in driving off the Maories but sustained a loss of 6 killed and 5 wounded wounded out of a force of about 45 men. Great alarm was felt in all quarters. Many families abandoned the Hutt; the militia were called out and patrols appointed to perambulate the town at night. The officer in command of the party attacked (Page) had a very narrow escape, having been fired at when forcing a passage out of his house. Wellington was in a state of great excitement for a considerable time after this attack and a strong party of militia and volunteers patrolled the town every morning before daylight. Despatches were sent to the Governor by the [Mule?] 1 am direct and by the *Cecilia* to Kaipara. The former vessel was lost at Hawke's Bay and the despatches by the latter were long in coming. In the meantime the Government Brig returned with Lieut Symonds from Wanganui having failed in settling the land claims in that place, the refractory natives there having become impracticable in their demands when they heard of the [supineness?] of the troops at Wellington and the success of Rangihaeata. The brig sailed soon after her arrival here for Auckland.

Following the battle military reinforcements were sent into the valley, and the Wellington magistrates decided to finally accept the offer of military assistance from Te Puni and Wi Tako. 100 muskets were issued to them and their men from New Zealand Company stocks.⁵³⁶ Major Richmond, the superintendent at Wellington, had been reluctant to issue arms to the Ngati Awa in view of Grey's "apprehension of rousing former animosities among the tribes"; but now he was convinced that "the late attack has proved too clearly how necessary it is, both for security and to enable our troops to act with any success in so difficult a country".⁵³⁷ Despite this and other reinforcements and the general panic at Wellington nothing further

⁵³⁵ Diary of F. Bradley, Ms 63, WATL, Saturday May 16 1846.

⁵³⁶ Wards, *Shadow*, 268.

⁵³⁷ Richmond to Grey, 19 May 1846, BPP (NZ) 5, 482. Richmond thought that "by this determination of Epuni [Te Puni] to unite with us in suppressing the rebellious natives, we secure the alliance of the whole of the Ngatiawa tribe, which being the most powerful in this part of the country will prove of the greatest service to the Government."

happened. The Maori forces in the Hutt withdrew. It seems unlikely that there ever was a plan to attack Wellington. The area at issue was, after all, the Hutt Valley.

Richmond then suggested to the Ngati Awa chiefs a joint attack on Te Rangihaeata's main base at Pauatahanui. Richmond thought that British forces could attack Pauatahanui from the front while Ngati Awa could cross the ranges and attack it from the rear. Te Puni and the others were opposed to the plan:⁵³⁸

They considered both the European and native force (not yet 200) too weak to enter upon such an expedition.

Grey, for his part, opposed the planned attack as soon as he got to hear of it. It would, he thought, have led only to Ngati Awa's certain defeat:⁵³⁹

The defect of this proposed plan of operations appears to His Excellency to have been, that the force under the command of Epuni, would, judging from Lieutenant Page's account, have been inferior in number to that of the rebels, whilst Epuni's men would certainly have been far inferior to them in practical experience of native warfare and knowledge of the country. His Excellency thinks, therefore, that the probability is, that so far would the rebels have been from allowing Epuni to have shut them in from this movement on their rear, that they, receiving intelligence of his approach, would have abandoned their pah, would have advanced to meet him in the densely wooded country in which he would have been involved, where he could have received no possible assistance from us, and that he would, in all probability, have received a signal defeat.

However, the plan proposed by Richmond was very similar to that ultimately adopted later in 1846.

Te Rauparaha did his best to remain friendly, and he wrote to Richmond on 25 May that he and the white people were at peace, and that he greatly regretted what had happened in the Hutt Valley.⁵⁴⁰ He said that he hoped that the fighting would be confined to Heretaunga and that for his part he would wait until the arrival of the Governor.

B. Grey's reaction

Grey, of course, was in Auckland in May and June of 1846, and he may not have learned of the outbreak of fighting in the Hutt for some weeks. Lord Stanley had been replaced at the

⁵³⁸ Richmond to Grey, 2 June 1846, BPP (NZ) 5, 483-4

⁵³⁹ Andrew Sinclair (Col. Sec) to Richmond, 20 June 1846, BPP (NZ), 484

⁵⁴⁰ Wards, *Shadow*, 270.

Colonial Office in late 1845 by no less a figure than W.E. Gladstone, and it was to Gladstone that Grey on 20 June 1846 reported the news of the skirmish at Boulcott.⁵⁴¹ (It is unlikely that either Gladstone nor anyone else in the British government would have given much attention to New Zealand affairs in the midst of the great political crisis of the repeal of the Corn Laws of 1846.⁵⁴²) Grey's main reaction was to ask for more troops to be sent from New South Wales. He was not very enthusiastic about the decision taken at Wellington to supply the "friendly natives" with firearms.⁵⁴³ As seen, he poured cold water on Richmond's plan for a joint attack on Te Rangihaeata at Pauatahanui. But in general Grey did not believe that the fighting at Boulcott showed any need to change his general policy of a military holding operation at Wellington and Porirua, road construction, armed policing, and military expansion beyond the region postponed to the following summer:

The circumstances which have recently transpired amount to this, that the natives have attacked one of the outposts stationed for the protection of that district of country which they were intended to cover, and have been beaten off. There appears, therefore, no reason why I should either depart from or vary that plan of operations which I adopted after the most mature consideration, and which still appears to me to be in every respect adapted to the state of affairs prevailing throughout these islands.

C. *Further skirmishing in the Hutt Valley (June 1846)*

In early June there was another gun battle at Boulcott between British and Maori forces. On 2nd June "the natives" appeared on the opposite side of the Hutt River from the British base. They burned down one of the houses abandoned by the settlers. The British soldiers opened fire; the Maori fired back across the river, burned another abandoned house, and then disappeared.⁵⁴⁴ Last reinforced the garrison at Boulcott, so that it now had 180 men as well as "our native allies", Ngati Awa from Wellington led by Te Puni - although Last was dubious about the value of Ngati Awa support.⁵⁴⁵ A few days later some of Te Puni's men went out to dig potatoes (presumably on Ngati Rangatahi's old potato grounds) and were fired on; the Crown forces counterattacked and the "rebels" withdrew once again.⁵⁴⁶

⁵⁴¹ Grey to Gladstone. 20 June 1846, BPP (NZ), 5, 480.

⁵⁴² On Gladstone's short tenure of the Colonial Office see Roy Jenkins, *Gladstone*, 84-5.

⁵⁴³ See Grey to Gladstone, 20 June 1846, at 481.

⁵⁴⁴ Last to Grey, 8 June 1846, BPP (NZ), 5,487.

⁵⁴⁵ Ibid: "...our native allies, who I find are remaining with us, more from mercenary views than friendly, as they are wanting pay, rations &c., and seem little inclined to pursue the object we want them for, which is to take to the bush and follow up the rebels. E Puni put us off by saying that when the Governor came he would do something."

⁵⁴⁶ See Last's report, 9 June 1846, BPP (NZ) 5,488.

There was another, more substantial, engagement on 16 June. Captain Reed of the 99th regiment, in command of 40 men, with “a small party of the friendly Maoris” were attacked by about 70 or 80 “rebels” in a bush clearing near Taita. The Crown forces, in open ground, were fired at from behind felled timber at the edge of the clearing. Reed and his men took cover in the bush and fired back, but then were caught in a cross fire and had to retreat back to Boulcott's. On the retreat he was joined by Lieutenant Page who come up with more men, but the combined force then continued to retreat.⁵⁴⁷ Crawford described the engagement in his diary:⁵⁴⁸

Captain Reid of the 99th went out from the upper stockade with a party of forty soldiers and 15 natives, Lt Herbert of 50th and and Mr [Polkinghorne?] of *Calliope* as volunteers, and proceeded towards the Taita to reconnoitre. Suddenly a Maori who was leading discovered the rebels and gave the alarm by firing his musket and throwing himself on the ground. The rebels then fired a volley but without effect, when a skirmish commenced which ended in the rapid retreat of the military with a loss of 4 wounded and 2 missing. Lt. Herbert being wounded through the arm and in the finger found himself abandoned and by good luck managed to secrete himself from the observation of the enemy and was afterwards discovered by the friendly natives and brought into camp. The militia about 12 under Lt White stationed at Taita hearing the fire hastened down to the assistance of the troops (who however had disappeared before their arrival) and engaged the rebels for an hour and a half driving them across the river.

W.B. White, a lieutenant of the militia and in command of the outpost at Taita, heard the sound of the guns and went to see what was happening with 11 volunteers, but found the soldiers had already retreated; his little party then fought "a very lively skirmish" but retreated when about 100 Maori warriors "came up the road at the double, trailing their arms". They turned out, luckily, to be "friendlies", accompanied by Scott, the interpreter.⁵⁴⁹ Grey was not impressed with Reed's conduct and was worried that the British retreat on this occasion would cause some uncommitted Maori to join forces with Te Rangihaeata.⁵⁵⁰

⁵⁴⁷ Reed to Last, 16 June 1846, BPP (NZ) 5,491.

⁵⁴⁸ Crawford, diary, June 17 1846, Ms 1001, ATL.

⁵⁴⁹ Highlights in the life of William B. White, typescript, Ms 4542, ATL, 20.

⁵⁵⁰ See Grey to Gladstone, 2 July 1846, BPP (NZ) 5,490 ("I apprehend that this affair will have a very bad effect upon the natives; that it will give them confidence in themselves; will lead them unjustly to undervalue the British power; it will induce many to join Rangihaeata...") Grey to Gladstone, 20 July 1846, BPP (NZ) 495, referring to Maori "contempt for us since Captain Reed's unfortunate affair". Grey may have been unfair: Last himself thought that Reed and "those under his command acted with great steadiness and bravery on the occasion": Last to Richmond, 17 June 1846, BPP (NZ) 5, 491.

In another incident, on 15 June a settler named Rush was killed in the Hutt Valley. F. Bradley noted in his diary:⁵⁵¹

I heard that the natives have come to the Hutt today & been firing upon the soldiers & there was a man of the name of Rush a carter went out in the morning to look for his horse but the natives got hold of him split his head with a tomahawk & then told our People were [sic] to find him.

5.9 “Entirely attributed to the intrigues of Te Rauparaha”: Grey becomes suspicious of Te Rauparaha's intentions, June-July 1846:

In early June Major Last, the officer commanding at Wellington, noted Te Rauparaha's apparent continued friendliness and helpfulness, but was nevertheless unsure about his stance. No real attempt was made to assess the difficulties of Te Rauparaha's position. The difficulty was that neutrality and peace-making on Te Rauparaha's part was not enough for officers such as Last: he wanted Te Rauparaha to actively aid in suppressing the "rebels". To be seen as loyal to the Crown Te Rauparaha was expected to attack his own kin and forces commanded by his own nephew.⁵⁵² Te Rauparaha offered to come in to Wellington with Major Arney, but Last did not think this was a good idea: "there is such a hostile feeling against him by all the people that I think it would not be advisable".⁵⁵³

Nevertheless Te Rauparaha came across to Wellington from Porirua in late June and stayed for a few days, presumably to talk things over with Richmond (Grey was en route from Auckland and did not arrive until after Te Rauparaha had returned to Porirua). A vivid, if prejudiced, account of this visit - which is not mentioned in the standard works by Burns and Wards - is found in Crawford's diary:⁵⁵⁴

Te Rauparaha came over from Porirua accompanied by Major Arney,⁵⁵⁵ Lt Peddar and escorted by a party of soldiers. He was lodged in [Rev?] Mr Douglas' house. The old rascal was made much of during his stay although the Maories would have nothing to say to him. His appearance is not particularly remarkable. He is rather bent by age, moderately tall and his expression of countenance but little more sagacious than that of other Maories. A large bunch

⁵⁵¹ Bradley diary, 15 June 1846, Ms 63, WATL.

⁵⁵² See Last to Grey, 8 June 1846, BPP(NZ) 32: "Rauparaha still continues his friendly intercourse, and even proposed to come into town with Major Arney. He is gone for a few days to Otaki. I feel a little suspicious of this chief, notwithstanding his professions, as his reluctance to assist in putting down the disturbances is inconsistent with his promises of alliances, &c.: time, however, will show."

⁵⁵³ Ibid.

⁵⁵⁴ Crawford diary, 26 June 1846, Ms 1001:5, ATL.

⁵⁵⁵ Major Arney was the commander of the force stationed at the Paremata barracks.

of feathers decorates his ear. His dress changed day by day - sometimes a [], sometimes European clothes. He was accompanied by his two wives one of whom is young and handsome.

On June 29 Te Rauparaha returned to Porirua.

Richmond, Last and others had been urging Grey to return from Auckland with reinforcements. Grey embarked on HMS *Driver* on 25 June, taking with him some men of the 58th regiment and party of artillery, and was in Wellington by the evening of 1 July, and remained in the area for a number of months, having "frequent consultations" with Major Last, the officer commanding.⁵⁵⁶ He also, according to Cowan, had discussions with Te Puni and the other Ngati Awa chiefs of Wellington.⁵⁵⁷ Whether as a result of these conversations, or independently, Grey now began to himself develop a firm mistrust of Te Rauparaha. By 9 June he had come to the conclusion that if the British attacked Te Rangihaeata at Pauatahanui they were at risk of being attacked in the rear by Te Rauparaha and other sections of Ngati Toa. For that reason, as Grey explained in a minute to Gladstone, he did not feel confident about attacking Te Rangihaeata "until I can assemble a force sufficiently large to enable me to hold Te Rauparaha in check at the same time time that Rangihaeata is attacked."⁵⁵⁸ But Te Rauparaha kept Grey guessing. Grey found out, or at least believed, that Te Rauparaha had been lying to him about his involvement in closing the coast road to the Manawatu. Grey struggled to understand and describe Te Rauparaha's stance in his reports to Gladstone. It seems likely that the real difficulty was his own limited understanding. Like Last, Grey could only be happy with Te Rauparaha's active military help: for Te Rauparaha to continue to act as a kind of broker or go-between - the most natural interpretation of Te Rauparaha's actions at this time - was simply "treachery".⁵⁵⁹ Grey's attitude to Te Rangihaeata was even more blinkered: he saw him as a rebel, a criminal and a murderer (although there is absolutely no evidence to suggest that Te Rangihaeata was involved in any of the murders in the Hutt Valley).

What clinched matters for Grey, or so he says, were two letters sent in May and July. The first was a letter to the chiefs of Wanganui sent by Te Mamaku (who was himself, of course, from Wanganui) from Porirua on May 25. One of the Wanganui chiefs to whom it was addressed sent it on to Grey, who presumably did not see it until early July. In this letter Te Mamaku claimed to have gained the victory at Boulcott's and had asked that the leading

⁵⁵⁶ Last to Grey, 4 August 1846, GBPP (NZ), 5, 500.

⁵⁵⁷ Cowan, *NZ Wars*, 1, 112.

⁵⁵⁸ Grey to Gladstone, 9 July 1846, GBPP (NZ), 5, 492.

⁵⁵⁹ Grey to Gladstone, 20 July 1846, GBPP (NZ), 5, 494: "The fact indisputably is that Te Rauparaha and some of the chiefs of the Ngatitua tribe are secretly assisting Rangihaeata, whilst they are professing the warmest friendship for us; to what extent their treachery may yet have proceeded I am not prepared to speak...".

chiefs of Wanganui "allow Ngapara, Maketu, Amarama, and Te Kawana, those who do not profess Christianity" to come and see Te Rangihaeata and Te Mamaku and "hear the particulars of the war".⁵⁶⁰ Te Rauparaha is mentioned briefly: "the coast, or road, is open and Te Rauparaha has given his consent". The other letter was from the Wanganui chief Maketu, announcing that he and his followers were on their way to Wellington.⁵⁶¹ This letter had been intercepted somehow⁵⁶² and sent on to Major Richmond. To Grey it all added up to a lack of good faith on Te Rauparaha's part, although as it happens the letter from Maketu seems mainly to be aimed at reassuring Te Rauparaha that Maketu's party was *not* coming south with hostile intentions.⁵⁶³ On the other hand the Ngati Awa chiefs at Waikanae, Wiremu Kingi, Te Heke, and Tuairane Hingarere, were convinced that the Wanganui detachment *was* hostile, and that other parties would follow, all seeking to join Te Rangihaeata in order to kill not only the Europeans but also the Maori Christians. To counter this the Ngati Awa at Waikanae wrote to Grey asking the government to supply them with arms and ammunition. They also told Grey that "now the Ngatitoa are aiding or strengthening Te Rangihaeata".⁵⁶⁴ But how objective the Ngati Awa chiefs were is itself uncertain, and there always the possibility that Ngati Awa sought to prejudice Grey against Te Rauparaha for their own reasons.

In fact it seems very likely that Grey was strongly influenced by the Ngati Awa chiefs in coming to the conclusion that Te Rauparaha was playing the Crown false. As noted, shortly after Grey arrived at Port Nicholson he had discussions with Major Last, Te Puni, and the other Ati Awa chiefs. Then there is the letter already described sent by Wiremu Kingi and the other Ati Awa chiefs of Waikanae on 15 July claiming that Ngati Toa was actively aiding Te Rangihaeata - which may have been true, or have been just mischief-making: who knows? Then, just before capturing Te Rauparaha, Grey himself paid a visit to Waikanae. The circumstances are described in Grey's report to Gladstone of 23 July 1846.⁵⁶⁵ Here Grey describes how the plan to land troops to intercept the party coming south from Wanganui were foiled because of the winds and heavy surf on the beach. He had previously collected

⁵⁶⁰ Te Mamaku to Hori Kingi, Te Tahana et.al, 25 May 1846, GBPP (NZ) 5, 496. Only the English translation is reprinted in the official papers.

⁵⁶¹ Maketu to Te Rauparaha. 9 July 1846. GBPP (NZ), 5, 494

⁵⁶² There is an implausible tale in Cowan, *NZ Wars*, 1, 116 that this letter to Te Rauparaha was entrusted to Richard Deighton, a young Wanganui settler bearing a despatch to Grey by Maketu himself. Deighton, if the story can be believed, travelled south from Wanganui *with* Maketu's party, all the time bearing a confidential despatch for Grey sewn into the collar of his coat by "one of Deighton's sisters" and Maketu "confidingly" gave to Deighton a letter from himself to Te Rauparaha. Deighton, naturally, took Maketu's letter straight to Grey. The strangest aspect of the story is that a Pakeha settler was able to stroll down the coast from Wanganui in company with a Maori invasion force, if that is in fact what it was. However we are in a realm of hopeless conjecture here.

⁵⁶³ The letter reads (in part): "Te Rauparaha; salutations to you...Don't inquire or be suspicious of this coming (down of people). It is not for hostile purposes. It is a visit to see Mokau and Mamaku."

⁵⁶⁴ Wiremu Kingi et al to Grey, 15 July 1846, GBPP (NZ) 5, 496.

⁵⁶⁵ (GBPP (NZ), 5, 497.

together a number of Ngati Awa and Ngati Raukawa chiefs. Being unable to land the troops, the *Driver* and the *Calliope* landed the Ngati Raukawa chiefs at Otaki and returned to Waikanae. Grey then adds:

The whole of the chiefs with whom I had interviews declared that these disturbances were to be entirely attributed to the intrigues of Te Rauparaha, and some of the chiefs of the Pah of Taupo at Porirua.

The discussions at Waikanae are also described by Cowan.⁵⁶⁶

Grey acted quickly after assuring himself of Rauparaha's duplicity. He ordered a force of troops and armed police aboard the warship "Driver," with some bluejackets from the "Calliope". The "Driver" next morning anchored off Waikanae, in the strait between Kapiti Island and the long beach where the Waikanae River issues from its sand dunes. Here Captain Grey went ashore and visited the Ngati-Awa Tribe; they were gathered in their *pa*, under Wiremu Kingi Te Rangitaake, who afterwards fought the British troops in the Taranaki War. To Wiremu Kingi and his chief men the Governor explained the danger which existed of a coalition between the Wanganui war-party and Rangihaeata's force, and requested the assistance of the Waikanae people in preventing a junction. Kingi promised that if Maketu brought his *taua* along the beach through Ngati-Awa territory they would intercept and attack him, but told Grey that they could not take the tribe into the bush if the expedition left the coast route and travelled through the ranges to the head of Paua-taha-nui or the Hutt. With this attitude the Governor was satisfied; *he satisfied himself also, from what he heard at Waikanae, that Rauparaha was playing the Government false.*

Cowan's main source for this is probably Lieutenant McKillop. This adds up to a fairly substantial Ngati Awa influence on Grey's decision-making. If they were right in their views about Te Rauparaha then there is no issue; but it in fact seems more natural to see Te Rauparaha as attempting to mediate between Grey and Te Rangihaeata. Ngati Awa were old enemies not of Ngati Toa as such, but certainly of Te Rauparaha, Te Rangihaeata, and their Ngati Huia kin connection with Ngati Raukawa, Ngati Awa's enemies. Thus they may have had their own reasons for wanting to influence Grey into taking action against Te Rauparaha. Certainly Grey should have been very careful about relying overmuch on the advice of those who may have had their own reasons for wanting to get even with Te Rauparaha.

Grey decided he had to act. He now felt sure that Te Rauparaha and much of Ngati Toa at Porirua were hostile and would support Te Rangihaeata in the event of a Crown attack. On 18 July Grey made a further proclamation of martial law, extending the proclaimed area

⁵⁶⁶ See Cowan, *NZ Wars*, 1, 116.

northward from Wainui to Wanganui.⁵⁶⁷ The main military base on the west coast, at the Paremata barracks, was placed between Te Rangihaeata and Te Rauparaha and was, Grey thought, vulnerable, especially if an attack was made on Pauatahanui. Grey's plan had two prongs. First, it was necessary to intercept Maketu's force. Secondly, Te Rauparaha had to be nullified, which Grey intended to do by kidnapping him. This rather risky plan is first mentioned in Grey's report to Gladstone of 21 July. Provided that on his visit to the West Coast Grey found "fresh cause to confirm my suspicions" he intended, he told Gladstone, to "attempt to seize Te Rauparaha and these chiefs, and disarm the disaffected portion of the tribe".⁵⁶⁸ What Gladstone might have thought of this plan to illegally kidnap a leading Maori chief whose worst offence had been reluctance to attack his own kinsmen is unknown; in any case it would be months before Gladstone would see the correspondence.

In a report to Grey dated 4 August, Last summed up the agreed strategy that he and Grey had developed in the preceding weeks. This reveals that one of the main purposes of arresting Te Rauparaha was to prevent him from coming to the aid of Te Rangihaeata once the latter was attacked at Pauatahanui. Whether or not Te Rauparaha was dissimulating (both Last and Grey were convinced that he was), he could hardly be expected to stand aside in the event of an all-out attack on Te Rangihaeata and the "rebels".⁵⁶⁹

After frequent consultations with your Excellency, since your arrival from Auckland, relative to the movements of the force under my command, particularly after the receipt of intelligence by the Government that a number of disaffected natives had left Wanganui, and were moving down the coast with a view of forming a junction with Rangihaeata and the rebels, at his pah of Pauhatanui [sic], in the northern branch of the Porirua river; and that this movement was being made with the sanction and connivance of Te Rauparaha, and some disaffected chiefs of the Ngatitoa tribe, residing in the immediate neighbourhood of our position; it was determined that an effort should be made to destroy this party, or to induce the friendly natives on the coast to prevent their progress; also that an attempt should be made to arrest Te Rauparaha and the disaffected chiefs with him, in the event of obtaining further evidence against them; and should these movements be attended with success, it would enable us to make an attack on Rangihaeata and his followers, without the apprehension of Te Rauparaha, or any evil-disposed Ngatitoas aiding him; and then the pa at Pauhatanui could be regularly invested, and the rebels destroyed.

5.10 Grey's military build-up and the military campaigns of 1846: summary of events

⁵⁶⁷ Cowan, *NZ Wars*, 1, 115.

⁵⁶⁸ Grey to Gladstone, 21 July 1846, GBPP (NZ), 5, 497.

⁵⁶⁹ Last to Grey, 4 August 1846, GBPP (NZ), 5, 500.

Grey began a substantial military build-up in the Cook Strait region in February 1846, with Ngati Toa as his target. A flotilla of navy ships came to Wellington, including the naval steamer H.M.S. *Driver*. Grey was in no doubt that the military buildup had transformed the political and military situation in the region. In February 1846 Grey came to Port Nicholson himself, and by April had formulated a specific plan of military conquest and settlement.⁵⁷⁰ The first and immediate step, was to secure “military possession of the country round Port Nicholson”. Grey saw that “Porirua is the key to the Wellington district, being the place through which the roads from all the other settlements pass to that place.” Grey favoured a complete reduction of the whole of the country to the authority of the Crown.

He also had decided that it had become essential to acquire land at Porirua and at the Wairau in order to make certain that the New Zealand Company would be in a position to place settlers on sections it had already sold there. Commissioner Spain had not, however, been prepared to recommend any grants either at Porirua or at the Wairau, and the Company had no possibility of obtaining a Crown grant there unless the Crown itself was to take separate steps to independently extinguish Maori – that is to say, Ngati Toa’s – title at both places. This Grey did the following year with the Wairau and Porirua purchases. It appears that by about April 1846 Grey had discussed the matter of the Porirua sections with Wakefield and had promised him that he would acquire land there for the New Zealand Company.⁵⁷¹ In September Grey had written to Gladstone (on receipt of the latter’s memorandum of 21 March directing him to assist the New Zealand Company with regard to the Wellington and Nelson grants) that he had already decided to do exactly that following discussions with Wakefield. Grey replied to Gladstone on 14 September 1846 (by which time, as it happens, Gladstone was no longer in office):⁵⁷²

In reply to your Despatch No.14, of the 21st March last, directing me to afford such necessary relief to the New Zealand Company as it might be in my power to adopt, in reference to certain complaints made in a letter addressed to you by the Secretary of the Company on the 28th February last, regarding various exceptions which had been made in deeds of grant offered to them for their lands in the Port Nicholson and Nelson districts, I beg to state that, long previously to the receipt of your despatch, the same complaints had been addressed to me by the agent of the Company in the colony, and that on my consulting the Law Officers of the Crown on the subject they stated it as their opinion that the exceptions in these grants objected

⁵⁷⁰ Grey to Stanley, 22 April 1846, enclosure No 3, BPP (NZ).

⁵⁷¹ This can be seen from the diary of on F. Bradley, a small farmer and bootmaker at Port Nicholson. This contains the following rather interesting entry for May 4 1846: “I met in with Colnl Wakefield & he told me that the governor has promised to get them Porirua but he said he believed all the land would be got very shortly as the new commissioner [McCleverty] was coming out, and I said Mr Spain (our late commissioner) had acted the Part of a very bad man and he [Wakefield] said he had”.

⁵⁷² Grey to Gladstone, 14 September 1846, reprinted in Turton, *Epitome*, A III, No 20, p 169.

to by the Company were such as to afford them reasonable grounds of complaint. The enclosed copy of the instructions I have issued to Lieutenant-Colonel McCleverty will show the manner in which I have proposed to relieve the Company from the difficulties arising from the loose exceptions which have been made in their grants of all Native pas and cultivations, &c.

Grey's decision-making is made very clear in a key report sent by Grey to Earl Grey in 1847. Here Governor Grey explained that it had been essential to obtain both the Porirua and Wairau blocks, as "in both of these districts the Company *had actually disposed of land to European settlers, whom, of course, it was desirable to place in possession of the sections they had purchased*".⁵⁷³ Moreover "the possession of a great part of the Porirua district, and its occupation by British subjects, were necessary to secure the town of Wellington and its vicinity from evil-disposed Natives".⁵⁷⁴

The complex events in the Hutt Valley in the first half of 1846 are traversed fully above. Briefly, first Ngati Tama and then Ngati Rangatahi, essentially a client group of Ngati Maniapoto people under the protection and control of the Ngati Toa chief Te Rangihaeata, were forced out of the Hutt by the British army. Ngati Tama, led by Taringa Kuri, left in February.⁵⁷⁵ Ngati Rangatahi under their chief Kaparatehau proved much more difficult to dislodge. Grey managed to extort from them an agreement to depart, following which their chapel, homes and cultivations were looted and burned by the soldiers, but Te Rangihaeata then ordered them to return. On 3rd March Grey proclaimed martial law. Slowly a shooting war developed in the Hutt Valley, culminating in the major engagement at Boulcott Farm on 16 May 1846. In June-July 1846, Grey became (he claimed) increasingly suspicious of Te Rauparaha's intentions, although the evidence indicates that Te Rauparaha was doing his best to keep the peace. By this time Governor Grey had *already* decided to place the New Zealand Company settlers on to their Porirua and Wairau sections and to take control of Porirua for strategic reasons. On 18 July Grey made a further proclamation of martial law, extending the proclaimed area northward from Wainui to Wanganui.⁵⁷⁶ In July Grey formulated a risky and audacious plan to simply kidnap Te Rauparaha. This plan is first mentioned, as far as I am aware, in a report sent by Grey to Gladstone on 21 July 1846. Provided that he could find "fresh cause to confirm my suspicions", Grey intended, he told Gladstone, to "attempt to seize Te Rauparaha and these chiefs, and disarm the disaffected portion of the tribe".⁵⁷⁷

⁵⁷³ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, I, 202 (emphasis added).

⁵⁷⁴ Ibid.

⁵⁷⁵ Grey to Stanley, 12 February 1847, PP 1846/48, GBPP(NZ), IUP edition, vol 5, 413.

⁵⁷⁶ See Cowan, *New Zealand Wars*, 1, 115.

⁵⁷⁷ Grey to Gladstone, 21 July 1846, GBPP (NZ), IUP ed., vol 5, 497.

6 Coercion: Abduction of Te Rauparaha and the 1846 Campaign

6.1 “Ngati Toa did not know the reason”: Kidnapping of Te Rauparaha (July 1846)

A. ‘Ngati Toa! Ngati Toa!’: Te Rauparaha is abducted

On 23 July 1846 Grey struck his first major blow against Ngati Toa by making a surprise attack on Taupo pa on Porirua harbour and capturing and detaining Te Rauparaha and four other Ngati Toa chiefs. In his biography of Grey Rutherford described this action as a “miniature *coup d’état*”.⁵⁷⁸

H.M.S. *Driver* went from Wellington around the coast, (on board was “a detachment of the 58th and 99th regiments, and as many of the *Calliope*’s crew as could be spared from the ship”⁵⁷⁹), first going to Waikanae, where Grey went ashore and met Wiremu Kingi of Ngati Awa. Grey’s principal objective seems to have been to intercept the group of Maori coming down the coast. According to Lieutenant McKillop, Wiremu Kingi told Grey that any such party would be prevented from coming down the beach but that he was not willing to attack them in the bush.⁵⁸⁰ It was apparently at Waikanae that Grey became fully convinced of Te Rauparaha’s “treachery” – perhaps as a result of the discussions he had with Wiremu Kingi.

Grey re-embarked on the *Driver* which headed south, passing Porirua harbour entrance in daylight “as if going to Wellington”⁵⁸¹. At night the vessel steamed back to Porirua and dropped anchor unobserved. Shortly after arriving Grey sent for Lieutenant McKillop of the *Calliope* and discussed the plans for the morning’s surprise attack. According to McKillop:⁵⁸²

I was sent for soon after we arrived, and had an interview with the Governor, who informed me of old Rauparaha’s treachery, and his wish to have him and three others taken prisoners, if possible by surprise; and knowing that I was acquainted with their persons and locality, he asked me if I would undertake the capture of the “Old Serpent” myself, allowing me to choose my own time and method of doing it; Major Durie, the inspector of police, being selected to take the others.

⁵⁷⁸ Rutherford, *Grey*, 111.

⁵⁷⁹ McKillop, *Reminiscences*, 198.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid. 199.

⁵⁸² Ibid.

As McKillop's narrative clarifies, the reason he was selected for the mission was that he had already been ashore in the area following Grey's visit the preceding March.

A candid contemporary account of the capture of Te Rauparaha by McKillop and Durie on Grey's orders and the events which followed at Porirua is given in a letter from W.J. Swainson to John Parkes written in September 1846.⁵⁸³

Rauparaha lives at Porirua close to the stockade where the soldiers are stationed. H.M.S. "Driver" was therefore sent round with more troops who with the sailors landed in the night and having surrounded his village, secured Rauparaha and many of his principal men and conveyed them on board the "Calliope" where they still remain. The Governor then returned to Wellington and ordered the Natives and Hutt Militia to march over the hills which divide this valley from Porirua, by doing which they would get in the rear of the rebel pa. I therefore accompanied the expedition, the natives being under Mr Scott's and my command and the Militia under the command of Mr McDonogh.

Another contemporary account is from Crawford's diary.⁵⁸⁴

July 24th. Heard of the steamer's proceedings. She had first proceeded up the coast to Waikanae and having lulled suspicion returned under cloud of night to Te Rauparaha's pa at Taupo on the Porirua harbour. The boats were manned and rowed and the pah surrounded at daybreak, when Te Rauparaha and 4 of his chiefs were taken prisoner and conveyed on board the steamer the Governor having full proof of the treachery of the former.

A detailed narrative was written by William B. White, of the Wellington militia, who in July 1846 was ordered "to join Major Durey's force of Armed Constabulary to proceed in HMS *Driver* on a secret expedition".⁵⁸⁵ White went on board the *Driver* to find it full of troops: "most of us had to lie on the cabin floor for the night".⁵⁸⁶ The force reached Porirua at daybreak. White describes what happened next:

In the morning at daybreak we reached Porirua and here disembarked a little above Rauparaha's pa. Major Durey and I with the force under our command were ordered to enter the Pa and capture the six natives who were known to us. Mackillop with twelve sailors was ordered to go direct to Rauparaha's hut, seize him and take him on board. We marched along the beach for about one hundred yards crossing a little stream where there were a number of

⁵⁸³ W.J. Swainson to John Parkes, 20 September 1846, in G.M. Swainson (ed), *William Swainson, naturalist and artist: family letters and diaries 1809-1855*, (1992), 127.

⁵⁸⁴ Crawford diary, 24 July 1846, Ms 1001:5, WATL.

⁵⁸⁵ Highlights in the life of William B. White, Ms 4542, ATL.

⁵⁸⁶ Ibid.

geese that made a tremendous noise, we entered the Pa taking the natives completely by surprise and had no difficulty in capturing our men.

Those arrested also included Wiremu Te Kanae and Hohepa Tamaihengia, both of Ngati Toa.

McKillop's own narrative is as follows:⁵⁸⁷

I took Mr Dighton (Deighton) with me to act as interpreter, and four of our own men unarmed, giving them directions to seize upon the old chief as soon as he was made aware of the charge preferred against him, and to hurry him down to the boat before he could raise his people, the principal object being to secure him. We landed at break of day; and while they were forming the troops on the beach, I with my small party ran on, as it was then light, fearing that conscious guilt might sharpen their ears and frustrate our plans. When we reached the pa not a soul was stirring, but our heavy steps soon brought some of the sleepers to the doors of their huts, knowing we were not of the bare-footed tribe. We could not wait to give any explanation, but pushed on to the hut which contained the object of our search, whose quick ears had detected strange footsteps; never having liked me, he did not look at all easy on perceiving who the intruder was, though his wife showed no alarm, and received me with her usual salutation. Upon informing him that he was my prisoner, he immediately threw himself (being in a sitting posture) back into the hut, and seized a tomahawk, with which he made a blow at his wife's head, thinking she had betrayed him. I warded the blow with my pistol, and seized him by the throat; my four men immediately rushing in on him, securing him by his arms and legs, started off as fast as his violent struggles would allow of, which for a man of his age (upwards of seventy), were almost super-human. He roared most lustily - "Ngati Toa! Ngati Toa!", the name of his tribe, endeavouring to bring them to the rescue; and in a few seconds every man was on his legs, and came rushing over to see what was the matter with their chief; but the troops and bluejackets coming up at the same time, and surrounding the pa, prevented any attempt at a rescue as he was already in the boat.

Te Rauparaha was told he would be shot if he attempted to escape.

Grey and Major Last then came ashore⁵⁸⁸ and supervised the the destruction of Ngati Toa's stocks of arms and ammunition. 32 muskets were seized, along with a "small iron gun

⁵⁸⁷ Lieut. H.F. McKillop, *Reminiscences of Twelve Months' Service in New Zealand*, London, 1849, p. 200.

⁵⁸⁸ Not all historians mention that Grey was present at the scene (see e.g. Cowan, *NZ Wars*, 1, 118-22), but it is clear from White's diary that Grey was present, although not in the first stages of the assault. White describes how during the disembarkation he noticed some Maori "very busy on a high backed hill behind the Pa", which he pointed out to Grey. White took men up the hill to find "they were moving ball cartridges packed in boxes into the bush, expecting we would seize it". The ammunition boxes were smashed open and the all the ammunition thrown down into a stream.

and carriage", axes and casks of powder.⁵⁸⁹ This must itself have been a heavy blow against Ngati Toa. A large party of Te Rangihaeata's supporters came towards Taupo to rescue Te Rauparaha as the ships were leaving with their prisoners. McKillop, described by William Swainson as "a mad harebrained fellow, delighting in everything plucky and reckless",⁵⁹⁰ took the gunboat towards the head of the harbour to intercept them and fired round shot at them, "which only had the effect of producing a straggling fire of musketry, at far too great a range to do any execution".⁵⁹¹ Grey's prisoners were locked into the engine room of the *Driver* and the ship steamed back to Wellington during the night. At one point something went wrong with the engines and Te Rauparaha and his fellow prisoners were nearly asphyxiated by the hot escaping steam.

B. *Consequences of Te Rauparaha's Capture*

According to the Te Kanae manuscript Ngati Toa were bewildered by Grey's capture of Te Rauparaha.⁵⁹²

In 1846, Te Rauparaha and his people were still residing at Porirua in their pa at Taupo. Their occupation was cultivating food. One day in June, Te Rauparaha and his people went to Kapiti to fish. When finished their fishing they returned to Porirua to their pa at Taupo. When the Europeans knew that Te Rauparaha and his people had returned there came the armed party of Sir George Grey, Governor of New Zealand, to arrest Te Rauparaha and his nephew aboard the ship "Calliope". Ngati Toa did not know the reason why Te Rauparaha and others were then arrested, even so until this day.

It is possible that Te Rauparaha's capture led to some of Ngati Toa taking up arms against Te Mamaku on the basis that his actions had led to the capture of their chief. This is suggested by Richard Taylor:⁵⁹³

A messenger arrived from Mr Govett informing me that Rangihaeata's party was broken up, that though there is much excitement about Rauparaha being taken prisoner all are at present living in peace and have declared war against Mamaku for being the cause of their chiefs being taken.

⁵⁸⁹ Best, *Porirua and they who settled it*, n.d., copy in Porirua museum library, p. 73.

⁵⁹⁰ Geoffrey Swainson (ed), *William Swainson: Naturalist and artist: Family letters and diaries 1809-1855*, 1992 118. McKillop, a midshipman at this time. went on to become an admiral.

⁵⁹¹ McKillop, *Reminiscences*, 203.

⁵⁹² Te Kanae manuscript, Graham translation, typescript, AIML, p. 17.

⁵⁹³ Taylor, Journal, qMS 1987 WATL, typescript p. 90 (4 August 1846).

Te Rauparaha's capture had an immediate political impact, as no doubt Grey had intended. W. Tyrone Power, an army officer who published his journals of his experiences in New Zealand, believed that the capture of Te Rauparaha had the effect of ensuring that uncommitted chiefs would keep out of the conflict, leaving Te Rangihaeata isolated. His capture also meant that some sections of Ngati Toa joined forces with the Crown and Ngati Awa, although not, thought Power, with much enthusiasm.⁵⁹⁴

The capture of Rauperaha, and the suddenness and energy with which it was done, paralysed the efforts of our enemies in the south, who all feared some similar surprise for themselves, and made the best of their way home, leaving Mamaku, Rangihaeta, and those who had openly committed themselves, to get out of the scrape as they best could. With such a hostage in our hands, we could command the *neutrality*, at any rate, of many of the tribes; while his own people, the Ngatitoas, to show their fidelity, volunteered to assist in attacking Rangihaeata. They actually did take the field, as it was safer to take them with us than to leave them behind; though it is a matter of great doubt which side received the most benefit from their services.

Grey of course was not a free agent and had to justify his actions to the British government. As Wards puts it, he “tried desperately hard to justify his capture of Te Rauparaha”.⁵⁹⁵ Grey believed, or at least claimed to believe, that Te Rauparaha had been involved in a plot to overthrow the government and seize Grey himself.⁵⁹⁶

In December 1846 he wrote page after page to the Colonial Office to explain his action, reviving stories of atrocities, recalling with his customary exaggeration the parlous state of the whole colony, the anxiety of so many Europeans to promote strife, the conspiracy, with Te Rauparaha at the head of it, to overthrow the government and seize Grey's person, even, as the 21-page dispatch reached new heights of absurdity, that Te Rauparaha condoned the rape of a European female. It might be thought that Grey was overstepping the limits of Colonial Office credulity when he wrote, posing as the gracious conqueror who wished to extend only clemency, that if he was to make public the various crimes for which Te Rauparaha had been seized such would be the outcry among the Europeans that it would be difficult to avoid bringing him to trial.

⁵⁹⁴ W. Tyrone Power, *Sketches in New Zealand*, 50.

⁵⁹⁵ Wards, *Shadow*, 280.

⁵⁹⁶ *Ibid.*

The Colonial Office acquiesced in Grey's actions, and thought it best not to inquire too closely into the legality of Grey's actions, a lamentable failure of responsibility. Stephen minuted:⁵⁹⁷

That this Chief was actively engaged in a Conspiracy to overthrow the Governmt. and seize the Govr. seems well established. Under what authority the Govr. holds him in Prison without a Legal Commitment he does not explain, nor, perhaps, is it necessary, or desirable, very closely to enquire. The Govr. seems to consider himself as armed with certain belligerent rights against these people – an opinion not I think sustainable as a mere point of Law, or rather not sustainable in point of Law by any facts which he has mentioned...Perhaps it might be proper to caution him on this head, not of course in the way of censure or dissatisfaction, but by way of putting him on his guard against a risk to which he does not seem to be alive.

6.2 “They were rather distrustful of their new allies”: Grey's military campaigns against Te Rangihaeata

The campaign that followed was essentially a campaign by the government and its Maori allies against a section of Ngati Toa led by Te Rangihaeata.⁵⁹⁸ Having learnt - or so he says - that Te Rangihaeata and his people had abandoned his fortress at Pauatahanui,⁵⁹⁹ in late July Grey gave instructions for a two-pronged attack.⁶⁰⁰ One force, made up of militia and Ngati

⁵⁹⁷ Stephen minute, 4 May 1847, CO 209/46, cited Rutherford, *Grey*, 114. Rutherford notes that the Colonial Office “took it all very coolly and fully supported his actions” (ibid). And Wards notes that “Stephen accepted it all”: *Shadow*, 280.

⁵⁹⁸ This is how it is seen by Wards: *Shadow*, 183.

⁵⁹⁹ To Grey the news of the abandonment of Pauatahanui by Te Rangihaeata indicated that another attack on the Hutt Valley settlers might soon eventuate: see Wards, *Shadow*, 281:

Once Te Rauparaha was out of the way, Grey appeared to be satisfied that this example of his power had removed any immediate crisis, for all his forces remained on the defensive and the Wanganui party was left to Wi Kingi. That he now had no intention of attacking Te Rangihaeata's pa, but planned to subdue him by blockade and manoeuvre, is clear from a long and devious memorandum written in reply to Major Last's report of 4 August [Grey, Memorandum, G 36/2, p. 114]. Here he objected to Major Last's statement that he had intended to take Te Rangihaeata's pa by *storm*. However, on 29 July, six days after the capture of Te Rauparaha, Puaha reported that Te Rangihaeata had abandoned his pa [*Spectator*, 1 August 1846] and Grey feared that he might be preparing another swoop on the Hutt Valley. Accordingly, following a plan almost identical to that of Major Richmond's earlier in the year, Grey gave instructions that a mixed force of militia and Ngatiawa should move through the bush from Taita to Pauatahanui, leaving the regulars in the valley on the defensive where they were. At the same time a detachment of regulars from the garrison of Paremata was to move up to Pauatahanui under the command of Major Last, who was to be reinforced for this purpose from Wellington.

⁶⁰⁰ Grey's avowed intention was not so much as to capture Pauatahanui as to forestall another possible attack on the Hutt: see Grey to Gladstone, 29 July, 1846, BPP (NZ), 5, 498: “Intelligence has just reached me that Rangihaeata, alarmed at the movements which are now going on, has moved from his pah at Pauatahanui, accompanied by a considerable number of his followers. Some of the rebels are supposed still to occupy the pah, but I have failed in obtaining any information as to the direction in which the main body have gone. This movement on the part of Rangihaeata will necessarily occasion corresponding modifications in the plan of operations which I had laid down. I have therefore just issued orders for the movement of a body of militia and police, accompanied by 240 of the Port Nicholson natives, from the Hutt, upon Pah Pauhatanui. by a mountain pathway which Rangihaeata

Awa was to cross the ranges from the Hutt Valley; the other, made up of regulars, was to move from the Paremata barracks under the command of Major Last. No regular forces (“not being suitable troops for bush-work”⁶⁰¹) were included in the force of 226 men crossing the ranges from the Hutt. The militia were commanded Captain McDonogh and Lieutenant White; Sub Inspector Chetham Strode commanded a detachment of the new Wellington military police, and “the native friendlies were under the charge of Mr. D. Scott”.⁶⁰²

Lieutenant White of the militia, in command of a party of volunteers, has left a valuable account of the campaign, describing the arduous struggle across the mountains from the Hutt Valley to Pauatahanui, a "terrible march, three days in the rain through the bush".⁶⁰³ On the morning of 1 August the force came to the hills overlooking the head of the Porirua Valley and were within sight of Pauatahanui. Scouts were sent forward, and then White heard "a clear distant voice" shouting "Ka mau, ka mau, ka mau" (I am taken). White moved forward to witness an extraordinary sight:⁶⁰⁴

I started at the double with about fifty men and the sight I beheld on reaching our party I shall never forget. The Maoris, our allies, were all on one knee, the butts of their guns on the ground, the right hand gripping the barrel, each man's head bowed on his left hand in prayer. Macdonogh and Middleton with their swords drawn stood beside the prisoner who lay on the beach, tied hand and foot. This was the unhappy man who had shouted "Ka mau".

David Scot, commanding the “friendlies”, also describes the scene:⁶⁰⁵

believes to be impracticable for any European force. If the rebels have again ventured in this direction, they will once more be driven back on their pah by this movement...” It is, however, by no means certain what Grey's sources for this intelligence were (he does not say) and it may have suited Grey's convenience to represent as a defensive measure what was in fact an aggressive attack on Te Rangihaeata and his forces. One certainly gains the impression from Scot's detailed narrative that the objective was the capture of Pauatahanui. He gives no indication that his force was meant to be on the lookout for Te Rangihaeata's men moving in the direction of the Hutt Valley; rather the objective was a surprise attack on Pauatahanui.

⁶⁰¹ Cowan, *NZ Wars*, 1, 125.

⁶⁰² Ibid. A detailed breakdown of the Hutt Valley force is given by Scott (or Scot): D. Scot, Narrative of a campaign against Rangihaeata, (hereafter Scot, *Narrative*), MS 88-103-2/15, ATL, entry for Friday 31 July: "Left the camp on the River Hutt this morning at 12 am our party consisting of the following forces - 50 Hutt Militia, 140 Wellington Natives, 16 Police, and formed in the following order on the opposite side of the river, 6 Natives proceeding as scouts under Kararu, 50 Natives, forming the advance guard under the chiefs Motoroa of Wairarapa and Porotu of Pipitea, 50 Militiamen under Captain McDonogh and Lieut. White, 16 Wellington Police under Sub. Inspector E.C. Strode, 104 Natives in the rear under the chiefs Pakuahi of Te Aro, and E. Tako [i.e. Wi Tako] of Kumutoto, in all about 226, and proceeded on the mountain road towards Porirua."

⁶⁰³ Highlights in the life of William B. White, typescript, Ms 4542, ATL, 21. White is exaggerating here. In fact the force left the main camp on the Hutt River on August 31 and was at Pauatahanui the following day.

⁶⁰⁴ Ibid.

⁶⁰⁵ Scot, “Narrative”,

At daylight proceeded in the same order Captain McDonogh leading the advance guard of Natives accompanied by myself, Mr White leading the militia, Mr Strode the Police and Mr Swainson the rear-party of Natives; the road continued very hilly and fatiguing, and notwithstanding the men were very heavily loaded they advanced cheerfully at a smart pace until [we] descended into flat timbered land at the head of the north branch of the Porirua harbour at about 11 am and where we supposed the rebels' Pa was situated. On the advanced party approaching this spot loud cries of women were heard and our scouts intimated that they had come in contact with the rebels, when we all pushed hastily forward and found them in possession of a prisoner Te Wareaitu or Martini Ruta a Wanganui chief of considerable note and one of the principal leaders of the rebels in their depredations on the Hutt. It appeared a party of about 40 of the rebels had this day come from the Horokiri where they were working after leaving their pa at Pauatahanui to obtain provisions and that one of the scouts Tamati Ngapuni of Pipitea suddenly came upon him unobserved some distance from his party and attempted to fire upon him but his gun being wet did not go off, when the prisoner attacked him with a long-handled tomahawk with which he wounded him severely in the wrist and hand and would no doubt have succeeded in killing him had another of our scouts Piripi of Pipitea come to his assistance and secured the prisoner; during this struggle some women escaped and gave the alarm [] no doubt a considerable number more would have been taken or killed. [There] was some disposition shown by Ngapuni's friends to shoot the prisoner and one cocked and levelled his piece at him but Wairarapa put it aside saying his life was at the Governor's disposal. The prisoner was secured with a pair of handcuffs and placed under the charge of Mr Strode and the police and the whole party prepared for advancing to the pa which the prisoner informed us had been abandoned...

This man. Te Wareaitu, Matini Ruta, (Martin Luther). was subsequently tried by court martial and hanged at Porirua as a rebel (see below).

The force moved into Te Rangihaeata's pa at Pauatahanui, but Te Rangihaeata and his people managed to escape into the bush, leaving the place empty. The planned pincer attack was foiled by bad weather in Cook Strait which delayed the *Calliope* and prevented the main force from arriving in time to prevent Rangihaeata's escape.⁶⁰⁶ The fortress, known as Mataitaua, is now occupied by St Alban's Church at Pauatahanui. The Crown forces fired on retreating Ngati Toa, and this caused McKillop to start firing on the pa from his gunboat in the harbour on the assumption that the fortress was resisting an attack. Rangihaeata was taken by surprise, and later in the day he called a challenge across the harbour: "What people are in my pa?". He was told: "The Governor's people and the Maoris of Port Nicholson." Majors Last and Arney and some of the troops arrived at dawn the next morning (Sunday 2 August) in the *Calliope's* boats: 7 officers and 160 men of the 58th, 65th and 99th regiments, to find

⁶⁰⁶ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501; McKillop, *Remiscences*, 209.

the pa at Pauatahanui “occupied by the militia, armed police and native allies”, and Te Rangihaeata gone.⁶⁰⁷ According to Scot “the *Calliope*’s boats came up for the purpose of seizing their canoes but found none and fired upon the rebels but without apparent effect”.⁶⁰⁸ The abandoned pa was subsequently converted into a British military post.⁶⁰⁹

The pursuit began the next day, August 3. At about 10 am the main force, including Grey and Rawiri Puaha's Ngati Toa, arrived at Pauatahanui.⁶¹⁰ Rawiri Puaha and his people were received "in a friendly manner" by the Ngati Awa.⁶¹¹ Scot noted that “both parties of natives had a friendly war dance”.⁶¹² The whole force, regulars, sailors, military police, militia, Ngati Awa and Puaha's Ngati Toa, under the general command of Major Last, now moved up the Horokiwi Valley from Pauatahanui (roughly the line of the current Paekakariki Hill road). Major Last describes the pursuing force under his command as 6 officers and 120 men of the 58th, 65th and 99th regiments, 30 militia, 150 Maori allies, which was accompanied by a separate force of 4 officers and 100 men of the Royal Artillery, 58th and 65th regiments with 80 Maori allies commanded by Major Arney.⁶¹³ On the first day the pursuers advanced about four miles into the forest. The force was led by Rawiri Puaha and the Ngati Toa, which the Ngati Awa were not altogether pleased about.⁶¹⁴

Our natives were often disappointed at the Militia not being allowed to accompany them, as they were rather distrustful of their new allies, the Ngatitōa tribe.

The advance was difficult: McKillop wrote that the path “lay through the most dense wood it has ever been my fate to tread, being frequently crossed by small rivers, and fallen trees of such a size as to make it necessary to change the direction of the road to avoid them.”⁶¹⁵

The next stages of the campaign, in which the pursuit was mostly left to Ngati Awa and Rawiri Puaha's section of Ngati Toa is conveniently described in Crawford's diary.⁶¹⁶

Aug 4th. Arrived HMS *Castor* from Sydney in 18 days and from Auckland in five. The troops had now pushed Rangihaeata into the hills and he had taken up a position on a steep and

⁶⁰⁷ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501.

⁶⁰⁸ Scot, “Narrative”, entry for August 2nd.

⁶⁰⁹ Cowan, *NZ Wars*, 1, 125: "The next stage in the history of Paua-taha-nui *pa* was its conversion into an Imperial military post. It was garrisoned by detachments of Regular regiments, and for a considerable period after hostilities had ceased it was occupied as an advanced post covering the construction of the main road northward to Paekakariki and Waikanae by a company of the 65th."

⁶¹⁰ Highlights in the life of William B. White, typescript, Ms 4542, ATL, 22.

⁶¹¹ Scott, "Narrative", *ibid*.

⁶¹² *Ibid*, entry for August 3rd.

⁶¹³ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501.

⁶¹⁴ Scott, "Narrative", entry for Monday 3 August.

⁶¹⁵ McKillop, *Reminiscences*, 213.

⁶¹⁶ MS 1001:5, ATL.

difficult ridge above the Horokiwi valley. The force against him consisted of several hundred soldiers, about 200 Natives and a strong party of militia and police. On the an unsuccessful attack was made in which Ensign Blackbird (99th) two soldiers and two seamen were killed.

On the 17th HMS Castor returned to Port with the Governor on board Captain Graham having ordered all the blue jackets to return to their ships and by his interference broken up the attack. Aug, 19th. HMS Castor sailed with the Governor for Auckland. When the troops evacuated the position before Rangi[haeata] at Horokiwi they left the friendly natives to build a fence around Rangi's position and thereby to put him in a pound but Rangi did not choose to wait for this but proceeded up the coast. The Ngati Awa with the friendly (soi disant) Ngati Toa under Puaha promised to pursue Rangi and did follow him and on one occasion lost three men in an ambush but they nevertheless did not show any great anxiety to come to close quarters. The supineness of the troops at this time is too disgraceful to believe. There they remained in quarters at Porirua when a little exertion would have enabled them to attack and take Rangi and his party and thereby put an end to the war.

Aug 24th. Heard of further retreat of Rangihaeata and that Epau the murderer of Gillespie had been found dead in the evacuated pa.

Crawford's belief that the Ngati Toa fighting on the side of the Crown were reluctant allies and unwilling to kill their own kin is also essentially Power's view (see above).

A very detailed description of the campaign is given by Scot. The first day of the pursuit was Monday 3rd August. Scot describes the day's events as follows:⁶¹⁷

At daylight half the rations were served out, 100 lbs of bisuit dust for the natives. At 8am whole party moved to the opposite point of the bay to await the arrival of more troops and Puaha's natives; and at 10am the troops and Porirua natives arrived in the *Calliope's* boats and canoes; both parties of natives had a friendly war dance. His Excellency, Captain Stanly and Major Arney arrived when the whole proceeded up the Horokiri [sic] Valley where the rebels were supposed to be. At the entrance of the valley the troops formed into two divisions and with the militia, police and sailors halted until the natives proceeded to reconnoitre the rebel Camp and report. Both parties of natives⁶¹⁸ proceeded by a difficult path up the valley, Puaha's party leading being acquainted with the country. Our natives⁶¹⁹ were disappointed at the Militia not being allowed to accompany them and they were rather distrustful of their new allies the Ngatitua tribe. It rained heavily during the forenoon. About two miles up the valley we arrived at two late deserted encampments of the rebels but met with no other appearance of their presence until we arrived at a large camp situated on a rising ground about a mile further

⁶¹⁷ Scot, "Narrative", entry for Monday 3 August

⁶¹⁸ That is, the Port Nicholson, presumably mainly Ngati Awa Maori who had reached the area from the Hutt Valley, and Rawiri Puaha and his Ngati Toa.

⁶¹⁹ That is, the Ngati Awa.

on which had a better class of houses and fires still burning every appearance of being occupied and on rising the hill our natives immediately prepared for action and I sent Mr Swainson to report back to His Excellency what had been observed. After a few minutes careful observation we found that the rebels had almost immediately before evacuated it and from appearances had made a very hasty retreat, the fires were still burning and a number of dogs and potatoes left, and on a more close examination the natives found the Bugle and several Bayonets of the 50th Regt taken from the Hutt camp besides several empty quarter powder barrels. This camp was the largest we had seen, containing sixty temporary houses all having the appearance of recent occupation, strongly situated for defence on a rising ground on the banks of the Horokiri stream with ravines and small streams on each side and open for retreat at the back. Here the natives determined to camp for the night to shelter themselves from the severe weather and send back for provisions a supply of which we were much in want of...

The next day, 4th August, the main force took a break. The militia caught up with them, but then Rawiri Puaha's Ngati Toa, not happy about being accompanied by British soldiers, left in a state of some irritation and went further up the valley on their own. In Scot's words:⁶²⁰

Mr Swainson went back with a party for provisions and did not return till afternoon, the remainder of the day was spent in cooking them. Captain McDonogh and the Militia arrived to proceed with our party at which they were much pleased but Puaha's party were dissatisfied and in fact refused to go on with them and in consequence went on by themselves, our party and the Militia remaining all night.

The next day (5 August) the militia and the Ngati Awa 'friendlies' moved forward again and met up with Rawiri Puaha and his Ngati Toa.⁶²¹ During the day Te Rangihaeata came down the hill to meet with Rawiri Puaha. The discussions are described by McKillop:

[H]e [Te Rangihaeata expressed his regret at a portion of his own tribe being in arms against him, and begged them to return to their pah or join him. Puaha, however, told him that he had already suffered from the misconduct of that portion of the tribe who were now with Rangy, and begged him to give up the murderers, which would at once have put an end to the proceedings. This, however, was declined, and the interview ended by the two chiefs rubbing noses, Rangy expressing his regret at being at variance with his children.

This meeting is also described by Scot:⁶²²

⁶²⁰ Scot, "Narrative", entry for August 4th.

⁶²¹ For a detailed contemporary account see Scott, "Narrative", entry for 6 August.

At daylight the Wellington natives and Militia moved on following the track up the valley about 3 miles, where we found the Porirua natives camped, and who reported that they had that morning come in contact with the rebels and had one man wounded in the neck and that the rebels Pa was situated at the top of an adjoining high hill and that Puaha and his party were reconnoitring it. Captain McDonogh and myself proceeded by a very difficult part leading up the hill until we reached Puaha's party and Mr Servantes who had had a narrow escape

At some point after the discussions, Ngati Awa and Rawiri Puaha's Ngati Toa assembled for a haka, in which apparently a number of the British soldiers joined in, "much to the delight of our maori friends".⁶²³

The next day, 6 August, the force then climbed the steep hill, or mountain rather, to attack Te Rangihaeata who was ensconced at the top. This is the place now known as Battle Hill, not far from the present road between Pauatahanui and Paekakariki. In Last's words:⁶²⁴

At about nine o'clock, A.M., we ascended the hill, preceded by an officer and a party of men with tools to cut away the wood to facilitate our getting up. After ascending with great difficulty about a mile, we suddenly discovered that the enemy had established himself in a stockade on the spur of a hill, which was not only excessively steep and precipitous upon each side, but so narrow in places that only a few men could proceed abreast.

Some of Te Rangihaeata's men appeared in front of the stockade, at which point "a heavy fire was opened on both sides"; Te Rangihaeata's force made "repeated efforts to turn our left flank, but were driven back with great loss to their position."⁶²⁵ Casualties were heavy on both sides. The firing lasted all day. A further engagement took place on the 8th, also with inconclusive results. The Crown forces and Te Rangihaeata's people continued to confront each other on the high ridge above the Horokiwi Valley.

Last, short of supplies, now decided to give up the attempt to dislodge Te Rangihaeata and his supporters from his very strong position at Horokiwi, where he had blocked the line of the ridge up which the troops were advancing by a breastwork of trees and rubble. Major Last could see no point in an all-out attack.⁶²⁶ On the 10th of August the

⁶²² Scot, "Narrative", entry for August 5th.

⁶²³ McKillop, *Reminiscences*, 217.

⁶²⁴ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501.

⁶²⁵ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501. McKillop writes (*Reminiscences*, 220) that "we sheltered ourselves behind the trees as we best could, and carried on an irregular fire for some hours, our people throwing away several thousand rounds of ball-cartridge. The rebels were more successful, and picked off several of our men."

⁶²⁶ Last to Grey, 4 August 1846, GBPP (NZ), 5, 501: "The enemy kept up a fire upon us during the whole time. His position having been thus felt and ascertained to be defended by strong

troops were withdrawn from the ridge at Horokiwi and returned to Pauatahanui and Paremata.⁶²⁷ The Ngati Awa under Te Puni and Wi Tako and the section of Ngati Toa commanded by Rawiri Puaha remained in position, but they were very disappointed by the withdrawal of the main force.⁶²⁸ The Ngati Awa were in fact rather suspicious of Rawiri Puaha's Ngati Toa. According to Ian Wards:⁶²⁹

[There] may have been a lack of confidence of the Ngatiawa in the Ngati Toa, but perhaps a diary entry of an early settler indicates the real situation - it states that judged by the number of bullets on the ground the "friendlies" had extracted them and fired blanks. To some extent this is confirmed by Mamaku, who after it was over said that while he would still like to fight the Ngatiawa, the Ngati Toa (Puaha's) were friends, and at night gave them ball cartridges and food.

On the morning of 13 August, however, Te Rangihaeata abandoned his position at Horokiwi. In Scot's words:⁶³⁰

A few shots were fired from the rebel's Pa early this morning and at about 7 am our natives observed their Porirua allies proceeding up to their Pa, when they also hastily followed in the same direction, and on arriving at, which to their great surprise and disappointment, found it had been abandoned by the rebels that morning, only an hour previously. The natives all being assembled in the Pa, discussed their future proceedings, and not withstanding the obvious propriety of an instant pursuit, they decided in waiting the arrival of the Waikanae party, who they fully expected in the course of the day, nor could I prevail upon them to take the immediate advantage.

Scott investigated Te Rangihaeata's fortifications and was "surprised to find it so much less defencible [sic] than we had supposed it to be".

For both the Crown forces and Te Rangihaeata and his people the key problem was provisions. At Horokiwi Scott noticed "an evident want of provisions, from the remains of native food - nakau and mamaku - which seemed to have been their chief support". Te Rangihaeata, unlike his pursuers, had women and children with him, and in a winter

entrenchments thrown across the steep and narrow ridge of a lofty and densely wooded hill, the rebels being in retreat, there was every reason to believe that their intention was to pour a few destructive volleys into our men as they advanced, crowded as they must have been into so narrow a space along the steep ridge, and then to fly in the woods in the rear, thus abandoning without loss a position which, from the want of supplies, it was impossible for them to retain for more than a few days. It did not appear expedient to incur so large a sacrifice of life to attain a post useless in itself, and which must soon have been ours without any loss..."

⁶²⁷ Cowan, op.cit., 130.

⁶²⁸ Scott, "Narrative", 10 August 1846.

⁶²⁹ Wards, *Shadow*, 284.

⁶³⁰ Scott, "Narrative", 13 August 1846.

campaign obviously had little choice but to attempt to flee to some safe place where food supplies could be obtained. It seems that his objective was the Otaki region, where he could count on support from his Ngati Raukawa kin (like Te Rauparaha, Te Rangihaeata was as much a Ngati Raukawa as he was a Ngati Toa chief). He must have known that once he was safely through hostile Ngati Awa territory around Waikanae (which was why he kept inland and did not come down to the coast) he would be in Ngati Raukawa territory where the Ngati Awa could only follow him at the risk of provoking a major tribal conflict. The obvious shortage of food may be one clue to Te Rangihaeata's unwillingness to compromise over the Hutt Valley: without a supply of food from the Hutt cultivations Te Rangihaeata lacked the resources to continue to defy the Crown.

Te Rangihaeata and his party continued to move north along the high ridge line above the coast, and Ngati Awa and Puaha's Ngati Toa continued to chase them. On 18 August the pursuers once again came to a camp which Te Rangihaeata had only just left. The remains of the fires were still very fresh. All that was left in the place were some dead dogs which had of starvation and "several New Testaments and prayer books in the native language with the leaves torn out". Scott believed that "their only food was such as they procured in the bush, which convinced us that they could not hold out again in another camp". Later that day, however, some of Te Rangihaeata's people managed to ambush a section of the Ngati Awa out in front of the main force; three Ngati Awa were killed as well as two of Te Rangihaeata's force.

The pursuit was now not far from Waikanae, and the Ngati Awa assumed that Wiremu Kingi, the Ngati Awa chief at Waikanae, would naturally come to their aid. However he declined to do so, and his refusal seems to have been one of the main reasons for the eventual abandonment of the pursuit. On 20 August the pursuing party descended to Wainui (Paekakariki) to obtain provisions from the local chief, Te Hurumutu; Scott and some others went on to Waikanae "where we found Capt. Stanley, Officers and thirty men of H.M.S. "Calliope", Major Durie, Mr. Strode and some policemen, and Mr D.A.C.G. Power (son of celebrated Tyronne Power)". R. Deighton, interpreter to Captain Stanley of the *Calliope* was sent on to Otaki to try to obtain the assistance of the Ngati Raukawa, apparently "in answer to Te Rauparaha's letter, calling upon them to join against the rebels".⁶³¹ Scott, Stanley, and Durie went to see Wiremu Kingi, but failed to gain the expected support:⁶³²

Proceeded to Wareroa and Waikanae, in company with Capt. Stanley and Major Durie to see William King, the principal chief of the latter place, to ascertain the feeling there as to joining us against the rebels. At the former place, the natives all declared themselves willing to join

⁶³¹ Scott, Narrative, 21 August 1846.

⁶³² Ibid.

us. We next saw William King and stated the object of our visit - to which he replied, that he was not aware the Governor required him to proceed against the rebels amongst the hills, but only to prevent their coming to the coast, and that he had done all that was required by proceeding to the Paripari for three days, and assisting to take the prisoners received at that place; and that he intended repairing his Pa, in case of attack from any other quarter, and that he did not consider it safe to leave the women and children of the tribe, in its present state. Captain Stanley offered to station there, during his absence, one hundred men for their protection, but this he declined and said he would attack the rebels if they made their appearance on the hills near his place, but would not join any pursuit in the bush.

Deighton fared no better with the Ngati Raukawa, who had decided to remain neutral.⁶³³

Mr Deighton had returned from Otaki, and reported the determination of the natives of that place to remain neutral, saying that had Te Rauparaha spoken to them personally, they would rise to a man, but would not attend to his letter, insinuating that it might have been written at the dictation of the Europeans.

Scott and the Ngati Awa and Puaha's Ngati Toa had come down to Paekakariki on 20 August and the pursuit did not resume until Saturday 22nd. Te Rangihaeata had, perhaps not surprisingly, made good his escape. The body of Te Pau of Ngati Rangatahi was found, shot dead a few days earlier by Wi Tako (Te Pau had killed the elder of the two Gillespies in the Hutt Valley in April):

The rebels' camp was again situated in a strong position on the ridge of a spur leading down from the mountain, fenced at both ends, and the trees cut and thrown down for defence on each side. Three graves were observed, but not opened, the body of Te Pau was found laying outside the fence, with only the face and a part of the body covered, and was immediately recognised by our natives, who supposed that he was left in that situation to satisfy us of his death, in hopes that we would not continue the pursuit further.

However, the Crown's Maori allies declined to continue the pursuit without the assistance of the Ngati Awa of Waikanae. The Waikanae area was Ngati Awa territory and Wi Tako and Rawiri Puaha were reluctant to lead a campaign through it in the absence of local support.

Rawiri Puaha's Ngati Toa also were concerned to learn the attitude of Ngati Raukawa, and in order to ascertain this on a large meeting was held at Otaki on August 28. Here Nohorua and other chiefs of Ngati Toa attempted to persuade Ngati Raukawa to attack Te Rangihaeata and the "rebels", holding them responsible for the disaster of Te Rauparaha's

⁶³³ Ibid, 22 August 1846.

capture. Ngati Raukawa responded coolly to this argument. Te Rauparaha's capture "was the same as his death to them" but they did not have any quarrel with Te Rangihaeata and were willing to allow him and his people to cross their lands in peace.⁶³⁴ (Both Te Rauparaha and Te Rangihaeata were, of course, rangatira of Ngati Raukawa in their own right.) Te Rangihaeata's sister also spoke, urging the Ngati Raukawa to actively support Te Rangihaeata, but this too was rejected.⁶³⁵ The meeting then ended under a "titanic heap of comestibles".⁶³⁶ Without Ngati Raukawa support Rawiri Puaha was unwilling to carry on with the pursuit, and in any case the Ngati Awa could not contemplate pursuing Te Rangihaeata through the Otaki region, occupied by their Ngati Raukawa enemies. This meant that the campaign was effectively over:

...The rebels had evidently proceeded towards Otaki, into which district all the Ngatiawa tribe objected to follow them, stating as a reason their not wishing to act with, or put themselves in the power of the Otaki tribe, anticipating that the rebels would themselves receive support in that district.

In early September Rawiri Puaha and his supporters returned to Porirua. Now safely in Ngati Raukawa territory, Te Rangihaeata ensconced himself at Poroutawhao, a swamp pa located between Levin and Foxton. This place, more correctly Poro-tawhao, belonged to Ngati Huia, Te Rangihaeata's and Te Rauparaha's Ngati Raukawa hapu, and was a place where Te

⁶³⁴ See Scot, *ibid*, 28 August 1846: "The Ngatitoas arrived early, when a very general meeting of the Otaki natives took place to receive them. The meeting was at first somewhat reserved on both sides, as was also the tone of their respective speeches, which in a very general, though candid, manner, expressed the views of both tribes. The meeting was addressed on the Ngatitoo side by Nohorua, a very old man, and near related to Te Rauparaha, Pukeko, Mohi, Te Rangi Korauata and Te Peko, a chief from Rangitoto [i.e. D'Urville Island: he must have been Ngati Koata]. The Ngatitoas urged the policy of attacking and driving the rebels out of this district, should they make their appearance there; imputing all the evil that had arisen to these parties, including the imprisonment of Te Rauparaha; and asking them what claim Rangihaeata had upon their sympathies, after the course he had pursued in leaving them and connecting himself with the Tauwheuhe or Wanganui people, and not to countenance their settlement amongst them, or evil would also shortly come on them; and also to consider that Te Rauparaha and two of his relations were, through the rebels' proceedings, imprisoned, and declaring that they, the Ngatitoas, intended to remain at peace with the Europeans. The Ngatiraukawa replied that they had in no way been the cause of or connected with these events. They had heard of them and remained thoughtful in the matter, not foreseeing the result to themselves, or from what quarter evil might arise. Their intention was to remain neutral, having as yet no cause of quarrel with Rangihaeata. If he arrived there, they should desire him to pass on in peace."

⁶³⁵ W.Tyrone Power, *Sketches in N.Z.*, 32-33: "Rangihaeata's sister was present, and addressed the meeting in favour of her absent brother, making, at the same time, some very unparliamentary remarks on the aggressions of the pakehas, and the want of pluck of the Maories in not resisting them, as her illustrious brother was doing. An old chief requested her to resume her seat, informing her, at the same time, that she was the silly sister of a sillier brother, and no better than a dog's daughter. He then put it to the meeting whether pigs and potatoes, warm fires, and plenty of tobacco, were not better things than leaden bullets, edges of tomahawk, snow, rain, and empty bellies?"

⁶³⁶ *Ibid*.

Rangihaeata would have confidently expected support.⁶³⁷ When the fighting was over Te Rangihaeata remained at Poroutawhao, where Eyre, Richard Taylor and Grey sometimes visited him.⁶³⁸ Grey took no further action to dislodge him, and indeed had no need to: his objectives had been achieved.⁶³⁹ As far as Grey was concerned the campaign was effectively over by the end of August. On August 31 he reported to Gladstone in fulsome tones that he "did not think that a more gratifying and useful series of results could have been obtained", and that "there will soon be no more prosperous nor contented settlements than those which have been established in the southern district of New Zealand."⁶⁴⁰ In February 1847 martial law was ended.

6.3 "A great shame": Executions and Transportation

Immediately following the campaign the unlucky Te Waireatu, or Matene Ruta, was tried by a military tribunal at Porirua, convicted and hanged.⁶⁴¹ W J Swainson wrote:⁶⁴²

A day or two after the conclusion of our journal Mr Scott and I returned to Wellington and went again to hear the trial of the prisoners who had been taken during the campaign. The first who was tried was the second man that was taken the day we arrived at Porirua, he was proved to be of unsound mind and was therefore sentenced to be confined for life. The second prisoner tried was the first one we took on that occasion; he is a chief of some consequence and it was proved that he had been a very active leader of the attacks on the Hutt, he was sentenced by the court martial to be hung, which was carried into execution the next day in front of the camp at Porirua. The trial of the remainder of the prisoners is for some reason or other put off.

Matini Ruta Te Wareaitu, from Wanganui, had been tried and convicted by a Court Martial (exercising authority by means of Grey's proclamation of martial law⁶⁴³) which sat at

⁶³⁷ On the meaning of the name, history and location of Poro-tawhao see Adkin, *Horowhenua*, 306-7.

⁶³⁸ Taylor, *Te Ika a Maui*, 339-40.

⁶³⁹ As Wards notes: see *Shadow*, 288: "The Wellington settlement was secure, the whole area was pacified, and all approaches well garrisoned - for the moment there was no point in carrying out further operations."

⁶⁴⁰ Grey to Gladstone, 31 August 1846, GBPP, 5, 499.

⁶⁴¹ There is an excellent account of the trial and the associated legal events in Wards, *Shadow*, 293-298. The proceedings of the court martial are recorded on on IA 46/480, NM 8/5. The execution and burial of Te Wareaitu is described in Rev. R Taylor, *Journal*, vol 3, p 236. Taylor was not convinced that justice had been done.

⁶⁴² W.J. Swainson to J. Parkes, 20 September 1846, G.M. Swainson (ed), *William Swainson, naturalist and artist: family letters and diaries 1809-1855*, (1992), 127.

⁶⁴³ The legal foundation for these proceedings, if they had any, was of course Grey's proclamation of martial law. The proclamation of martial law was read out at the trial: see Wards, *Shadow*, 293.

Paremata on the 14 and 15 of September. The circumstances of his capture have already been described. Why this unfortunate man was selected as an example is not clear.⁶⁴⁴ Te Wareaitu was charged with being in arms against the Queen, and secondly with being engaged against the Crown forces on 16 June. According to Rutherford “only four natives gave evidence and there was no defence”.⁶⁴⁵ The Court Martial found him guilty of being in arms against the Crown and with having actively assisted the rebellion, but not of taking place in the engagement on 16 June. There seems to have been no suggestion that Te Wareaitu had ever committed any kind of atrocity or criminal offence. The matters on which he had been convicted were, however, enough for him to be sentenced to death.

Matini Ruta was hanged on September 17 in front of the army camp at Paremata. William B. White thought his execution “a great shame”.⁶⁴⁶ Another man, Rangiatea, said in some sources to be Te Wareaitu’s brother, was found to be insane and was “let off with imprisonment for life”.⁶⁴⁷ He died in custody two months later. Matini Ruta's execution caused a sensation among the tribes. According to a letter written by one T.B. Collinson in November 1846:⁶⁴⁸

Out of those captured in July near Wellington, one has been hanged by sentence of court martial for rebellion, & seven transported to Hobart town for life. The principal chief Rauperaha...is still a prisoner on board the *Calliope*; his comrade, the rebel chief Rangihēeata [sic] has retreated 100 miles from Wellington. The hanging of that native has startled all the natives in New Zealand. They think they ought to revenge it according to their own laws; but they also wish not to risk the profits they are making from English trade.

Collinson believed that one reason why Te Rangihāeata was finding it difficult to gather more support was the interests of the tribes in road-building and commerce.⁶⁴⁹

⁶⁴⁴ See the discussion in Wards, *Shadow*, 294. He was not accused of involvement in the Gillespie murders but only of resisting and wounding Tamati Ngapuna (Ngati Awa) and of being in rebellion against the Crown.

⁶⁴⁵ Rutherford, *Grey*, 115. See also Wards, *Shadow*, 293: “unlike the procedure adopted in civil cases, no one was briefed to defend the prisoners”.

⁶⁴⁶ Highlights in the life of William B. White, typescript, Ms 4542, Alexander Turnbull Library, Wellington.

⁶⁴⁷ Crawford diary, MS 1001:5, Alexander Turnbull Library, Wellington.

⁶⁴⁸ T.B. Collinson to his mother, 17 November 1846, Ms 1039-1, Alexander Turnbull Library, Wellington.

⁶⁴⁹ See *ibid*: [T]here is a very strong desire for making money in trade with the English settlers, over the whole Country, which is superseding their old desires for fighting; and is introducing with it, a desire to conform to European customs and clothing. There was always this desire in the neighbourhood of the mission stations; it is now spreading over the whole island, by the more potent influence of money. As a proof of it - the other day Rangihāeata sent messages to all the tribes on the Lake Taupo to come down and assist him in a grand attack upon Wellington. They have returned for answer: what is your pay - Will you give as much as the Queen gives her soldiers? The Governor has been furthering this desire to engage in traffic; by proclaiming that he is going to make a road from Auckland to Wellington, upon which natives will be employed at a daily rate of wages. There have

Rutherford has analysed the trial and execution of Te Wareaitu as follows:

Grey justified this action on the grounds that Luther and Te Rangiatea were persons of consequence, being half brothers of Mamaku, the Wanganui chief who had joined Te Rangihaeata on his murderous attacks on British settlers [Rutherford in my view is incorrect about Te Rangihaeata here]. It was necessary to inflict salutary punishment so as to satisfy the minds of European settlers and convince the natives that the murder of old men and boys was a dishonourable mode of warfare that could not be condoned. The urgency of the case, the difficulty of transporting the native witnesses to Wellington for the case to be tried by the Supreme Court, and their risk of being intimidated if the trial were delayed were advanced as reasons for proceeding by court martial. The Governor's case was, however, very flimsy. There was no evidence that Luther was involved in the murders nor proof that he had participated in the engagement of 16 June. Grey admitted that he could not ascertain the actual murderer nor assign the precise degree of guilt of each individual. Luther's proved offence was that, in common with hundreds of others, he had been arms against the Crown, that he had been caught near Rangihaeata's *pa*, 'the resort of murderers', and that he had forcibly resisted capture. Grey needed a victim to whom he could point and say that murderers and rebels were in fact punished by death. Luther was about the right stature to serve his purpose, important enough to be an impressive victim, but not so prominent that his execution would cause too much resentment.

Rutherford believes that "the Martin Luther episode was long remembered as the worst blot in his [Grey's first governorship]" and that it "shook the faith of chiefs like Wiremu Kingi in British justice".⁶⁵⁰

Wards' judgment is even more severe.⁶⁵¹

That Grey insisted on these courts martial be carried out, and that the inspired sentences be executed, is justifiable only if it can be demonstrated beyond reasonable doubt that the emergency was real and that the example – even though misjudged at the time – was calculated to inspire respect for British government among the tribes. The facts, in their day to day presentation, make it impossible to do either...If it is difficult, on the information and the needs of the time, to justify Grey's insistence on these courts martial, how much more difficult is it to review with anything but distaste the explanations he made to the Colonial Office. Here he stretched the truth to the point of falsehood, not from ignorance of the facts but as a calculated attempt to mislead.

been several chiefs from the interior, here, to visit the Governor upon this; and they have shown as much anxiety to have the road carried through his own part of the country; as Landlords in a county in England; and have each trumpeted forth the praises and advantages of their own line, as flourishingly, as if they had been Railway directors.

⁶⁵⁰ Rutherford, *Grey*, 296-7.

⁶⁵¹ Wards, *Shadow*, 297.

Other "rebels" were transported to Van Diemen's Land. These were a group taken prisoner by Wiremu Kingi at Pari Pari near Waikanae on August 13, "eight half-starved fugitives"⁶⁵². Of the eight taken prisoner and convicted by court martial on 12 October, five were eventually transported; but when the Colonial Office and the Governor of Van Diemen's Land queried the legality of the proceedings Grey had all five returned to New Zealand and released.⁶⁵³ Two of them had been detained in Auckland as witnesses against Te Rauparaha, but in fact Te Rauparaha was never put on trial. As Wards puts it:

[A]lthough Te Rauparaha had been captured he was never tried and both the manner of his capture and his continued reception had no demonstrable legal basis. Nor was Grey, try as he would, ever able to formulate one.

Martial law at Wellington ended with an Act of Indemnity passed in 1847.

6.4 Ngati Toa's position at the end of 1846

Te Rauparaha remained in the government's custody for some time. Immediately after his capture he was placed on HMS *Calliope* and was then taken to Auckland "and put under Te Wherowhero's care in a hut in the domain at the place where the Chinamen's garden was afterwards situated".⁶⁵⁴ There is no evidence that Te Rauparaha was ill-treated in any way, but of course he was now an exile and was unable to have any influence on events at home, no doubt one of Grey's main objectives. Grey seems to have spend some time with his guest in order to learn more about Maori traditional history and literature. A recently published document has shown that while at Auckland Te Rauparaha provided Grey with a great deal of traditional information, but the papers, which today would be of enormous significance and value, were unfortunately lost when Government House in Auckland burned down in a fire in 1848. The fire destroyed many papers and artefacts collected by Grey, including, he lamented, "a large collection of songs and religious chants, which formed portions of the former idolatrous religious service of the old New Zealanders".⁶⁵⁵

⁶⁵² Wards, *Shadow*, 285.

⁶⁵³ The complex legal manoeuvres are described in Wards, *Shadow*, 294-6.

⁶⁵⁴ Ibid.

⁶⁵⁵ Grey to G Gairdner, Home Office, London, GRE/B999/6B/11-12, University of Durham Library, cited D J Kerr, *Amassing Treasures for All Times: Sir George Grey, Colonial Bookman and Collector*, Otago University Press, 2006.

These were wholly unknown hitherto & were given to me by old Te Rauperaha [sic] at various times whilst he was under restraint here in the presence of other old chiefs so that I wrote them down under the most careful correction. Such an opportunity of collecting these songs will probably never again present itself, & I fear that the former mystical worship of the New Zealanders will become one of the forgotten things of the world.

As a result of Crown action, then, by the end of 1846 Ngati Toa had been effectively crushed. Their great chief languished in captivity in his hut in the Auckland domain, honoured and looked after by Te Wherowhero and others but cut off from his people and unable to influence events. Te Rangihaeata and a section of the iwi had been forced into exile at Poroutawhao. Ngati Rangatahi had been driven out of the Hutt Valley. Having nowhere else to go, they ended up “squatting” on the southern bank of the Rangitikei river, where some years later they became embroiled in a dispute with Ngati Apa over the allocation of reserves after the Crown’s purchase of the Rangitikei-Turakina block in 1849.⁶⁵⁶ Ngati Toa had had a dramatic and bruising series of encounters with the Crown in the critical period from 1843-6, involving battles and loss of life at the Wairau, the Hutt Valley and in the Horokiwi campaign. The tribe’s weapons and ammunition had been taken from them, and the centres of commerce and trade in the Cook Strait region were in the process of shifting from Port Underwood and Kapiti to the new New Zealand Company towns at Port Nicholson and Nelson. Leadership of Ngati Toa and Ngati Raukawa now largely fell to three younger chiefs, Matene Te Whiwhi, Tamihana Te Rauparaha and Rawiri Puaha. It was at this juncture that Governor Grey now turned his sights on acquiring Ngati Toa’s lands at the Wairau and Porirua.

⁶⁵⁶ See David Armstrong, “A Sure and Certain Possession”: *The 1849 Rangitikei/Turakina Transaction and its Aftermath*, 2004, 146-152.

7 The Wairau and Porirua Deeds

7.1 The Context of the 1847 Porirua and Wairau deeds

Following the capture and detention of Te Rauparaha and the exile of Te Rangihaeata the next blow to fall on Ngati Toa was the loss of nearly all of their lands in both the North and the South Islands. This arose partly from the 1848 Wellington grant, but arose mainly as a consequence of the Wairau deed of 18 March 1847, signed by Rawiri Puaha, Matene Te Whiwhi and Tamihana Te Rauparaha, and the Porirua purchase of 1 April, signed by Rawiri Puaha, Te Watarauhi Nohorua, Mohi Te Hua, Matene Te Whiwhi, Nopera Te Ngiha, Ropata Hurumutu and Paraone Toangina. Conspicuous, of course, by their absence on either deed are the names of Te Rauparaha and Te Rangihaeata. Both deeds are essentially two halves of a single transaction and need to be interpreted in that light.

The processes of tenurial change and dispossession of Ngati Toa with regards to their lands at the Wairau and at Porirua are in every way linked, a fact which the division of Ngati Toa's rohe amongst a number of Waitangi Tribunal inquiry districts has perhaps obscured. These parallels are as follows:

- The New Zealand Company had conducted surveys at both the Wairau and at Porirua, resting its claim to both on the extinguishment of Maori title by the 1839-40 deeds and the Company's November 1840 agreement with the Crown (in the case of Porirua, the surveys were done in 1841 and at the Wairau in April-May 1843);
- Ngati Toa resisted the allocation of sections at Porirua and the surveys at the Wairau in more or less the same way (i.e. peacefully, and with no harm being done to either the settlers or the surveyors, and with their property being carefully returned to them);
- Ngati Toa took part in Spain's inquiries and denied any alienation of Porirua or of the Wairau. Commissioner Spain accepted the Ngati Toa evidence, and declined to recommend any grant to the New Zealand Company of any land either at Porirua or the Wairau (even though the New Zealand Company had surveyed sections at both places);
- Governor Fitzroy's grants similarly made no grants of any land at the Wairau or at Porirua, which may be said to be Ngati Toa's core territories;

- The New Zealand Company then objected to both grants (although it was the Wellington grant which was the main focus of objection);
- The British government, now a Liberal government and supportive of the New Zealand Company, directed the new governor (Grey) to assist the company in every way, including getting to title to land at the Wairau and Porirua;
- Governor Grey carried out this mission by bringing maximum pressure to bear on Ngati Toa (that is, by kidnapping one of their leading rangatira and attacking the other one and driving him to exile);

The Crown then purchased the Wairau *and* Porirua from Ngati Toa simultaneously and advised the New Zealand Company that it had done so. The New Zealand Company was told, however, that as the Crown had borne the costs of extinguishment of the Maori title to the Wairau and Porirua the Company would have to pay the government for any land it chose to select at either place.

7.2 “The payment made for it cannot but be regarded as small”: Grey’s intentions

Grey’s report to Earl Grey on the Wairau and Porirua deeds, sent on March 26 1847, is a key document and merits careful analysis.⁶⁵⁷ Grey begins his report with a convoluted statement that Lieut-Col McCleverty’s duties had meant that he had been unable to give him any “efficient assistance”; thus he had decided to settle the matters of the Wairau and Porirua Blocks himself. Both areas posed problems of particular importance and urgency as far as Grey was concerned. There was firstly the supposed military threat posed by Ngati Toa’s proximity to the New Zealand Company town at Wellington. Secondly, the New Zealand Company had already sold land at Porirua and the Wairau and the purchasers wanted to obtain possession of their sections. In Grey’s words:⁶⁵⁸

In both of these districts the Company had actually disposed of large areas of land to European settlers, whom, of course, it was desirable to place in possession of the sections which they had purchased: and moreover, in a military point of view, the possession of a great part of the Porirua District, and its occupation by British subjects, were necessary to secure the town of Wellington from future hostile attacks and aggressions by evil-disposed Natives...

⁶⁵⁷ Grey to Earl Grey March 26 1847, Mackay, *Compendium*, vol. 1, 203; CO 209/5; Cmd 1847/892, GBPP (IUP), NZ, vol 6, pp 7-9 (in Appendix).

⁶⁵⁸ Mackay, I, 201.

The fact that Spain had concluded that the New Zealand Company was not entitled to grants either at Porirua or at Wairau now posed a problem because the Company had already sold land at both places. Spain had gone further and had stated his opinion that the Porirua and Wairau areas undoubtedly belonged to Ngati Toa. The purchasers of these sections thus were not able to acquire them by simply invoking the agreement between the Company and the British government of November 1840. The only alternative, as Grey saw it, was for the Crown to separately extinguish Ngati Toa title to both areas by separate pre-emptive purchases. This consideration may have even loomed larger in Grey's mind than the military threat, real or imagined, posed by Ngati Toa at Wellington. Certainly by late April or very early May 1846 Grey had met William Wakefield at Wellington and had discussed the Porirua (and probably the Wairau) sections with him. The diary of a Wellington settler named Bradley records a conversation he had with William Wakefield on May 4 1846:⁶⁵⁹

I met with Colnl Wakefield & he told me that the governor has promised to get them Porirua but he said he believed all the land would be got very shortly as the new commissioner was coming out & I said Mr Spain (our late commissioner) had acted the Part of a very bad man and he said he had.

Grey explains the effect of Spain's decisions on Ngati Toa rights in the North and South Islands as follows:

The claims of the New Zealand Company to the Porirua and Wairau Districts had not only been decided upon by Mr. Commissioner Spain as against the New Zealand Company; but after disallowing the claims of the Company to these districts, that officer had further reported that "the district lying between Wainui and Porirua, inclusive of both places, must be regarded as being in the real and bona fide possession of the Ngati Toa Tribe; and that a district of country in the Middle Island, comprising the Wairau and a part of Queen Charlotte's Sound, must likewise be regarded as being the real and *bona fide* possession of the same tribe." The latter decision really gave a claim to the Ngati Toa Tribe to a tract of country in the Middle Island extending to about 100 miles to the south of Wairau, as the whole of this territory is identical with their claim to the valley of the Wairau.

Grey believed that acquisition of the Wairau region would also led to a rapid expansion of pastoral farming and economic growth (why the region could not be developed and settled in association with its Maori owners Grey does not say):

⁶⁵⁹ Bradley diary, MS 63, 4 May 1846, WATL.

In reference to the Wairau District, I thought it advisable not only to purchase this district, which was estimated by the Surveyor-General to contain 80,000 acres of the finest agricultural land, and about 240,000 acres of the finest pastoral land, but also to endeavour to purchase the whole tract of country claimed by the Ngati Toa Tribe, and extending about 100 miles southward of that valley, the greatest portion

In his report Grey stressed, firstly, the need to eliminate Ngati Toa as a military threat, and, second, the need to place the New Zealand Company purchasers on the lands they had purportedly purchased at Porirua and the Wairau.⁶⁶⁰

The Land Claims which appeared in the circumstances of the Colony to require an immediate adjustment were those advanced by the New Zealand Company: 1stly to the District of Country including Porirua and lying between that place and Wainui:- 2ndly to the District of Wairau in the Middle Island, and the Country lying immediately to the Southward of that District. In both of these districts the Company has actually disposed of a large quantities of land to European settlers whom it was of course desirable to if possible to place in possession of the Sections which they had purchased, and moreover, *from a military point of view* [emphasis added] the possession of a great part of the Porirua District, and the its occupation by British subjects was necessary to secure the Town of Wellington and its vicinity from future hostile attacks and aggression by evil-disposed Natives, as it was only by the occupation of the Porirua district that the various tracks leading across the woody mountains which lie between Porirua and Wellington could be effectively closed against an enemy.

In his report Grey also stressed the value of the Wairau district, and the fact that he had acquired the land at a bargain price: the block was “so large that, in reference to its quantity and value, the payment made for it cannot but be regarded as small”.⁶⁶¹ (Significantly his report to London gives no indication as to why Ngati Toa agreed to his demands, or how he may have achieved their compliance with his wishes). To sum all this up, Grey had two objectives – both of which he carried out. He had been directed to assist the New Zealand Company by Gladstone, and he carried out this instruction very comprehensively by acquiring the Porirua and Wairau districts so that Company selectors could obtain possession of their sections at both places. He also had the strategic objectives of protecting Wellington, which was to be achieved by creating a British settlement at Porirua which could secure the various paths and tracks across the Wellington peninsula to Port Nicholson (which he specifically mentions in his report). To obtain Ngati Toa’s acquiescence, however, he had to find some

⁶⁶⁰ Grey to Earl Grey, 26 March 1847, Mackay vol 1, 202; original on CO 209/51, CFRT Te Tau Ihu DB 1484-1505.

⁶⁶¹ Ibid.

means of persuading the leadership of the tribe to agree to sell. Obviously Grey had one powerful lever: Te Rauparaha was in government hands.

7.3 “Give me the land where my dead died”: Ngati Toa Motivations

The Wairau deed especially has been debated frequently in the secondary literature and in a number of unpublished reports.⁶⁶² The obvious question is why Ngati Toa parted with the Wairau in 1847 after having so tenaciously defended it in 1843. Most writers point to the obvious facts that at the time of the sale Te Rauparaha was in custody and Te Rangihaeata in exile at Poroutawhao. As noted above, younger “Mihanere” chiefs were prominent in this sale. Matene Te Whiwhi, in particular (who was Ngati Raukawa as much as he was Ngati Toa), was shortly to play an important role, under missionary advice, in persuading Ngati Raukawa to allow Ngati Apa to sell the Rangitikei-Manawatu block to McLean. Rawiri Puaha, who has featured so often in this report, was now Ngati Toa’s senior chief, a committed Christian, and was also naturally deeply troubled about Te Rauparaha’s captivity and his treatment (he had written to Grey on a number of occasions on this subject).

According to the Te Kanae manuscript, Ngati Toa sold the Wairau block to the government as a consequence of moral pressure from Grey. In 1847 Grey spoke to Rawiri Puaha and asked for the Porirua block and at the same time demanded the Wairau.⁶⁶³

Sir George Grey asked Rawiri Puaha and his people to sell Porirua to the Queen. The chiefs of Ngati Toa agreed and the area for sale was partitioned off, and the part set aside where he now resides. In 1847 Sir George Grey asked Rawiri Puaha and his people to give over Wairau, the place where Wakefield and his comrades died, to the queen in compensation for her dead. This was the word of Sir George Grey: “Give me the land where my dead died”. Rawiri Puaha and his tribe agreed and so passed Wairau even unto Kaikoura on account of the dead who died in the conflict at Wairau.

Perhaps this is to reinterpret events in a way that made sense to Maori susceptibilities, although there can be little doubt that Grey certainly did have both the cunning and the insight into Maori customary practice to pitch the Crown's right to the Wairau on the basis of *utu*. While on the one hand he was writing to the Colonial Office about “evil disposed natives” (Ngati Toa) he was at the same time carrying on a negotiation with those very same natives persuading to give up their land to the Crown as ‘*utu*’. (Significantly the Tuamarina district, scene of the Wairau affray in 1843, was excluded from the Wairau reserves and vested in the

⁶⁶² For a particularly clear and comprehensive analysis see G.A. Phillipson, *Northern South Island District Report* (Rangahaua Whanui series), June 1995, 85-95.

⁶⁶³ Te Kanae manuscript, Graham trans., APL, p. 16.

Crown, no doubt as part of its 'utu'.) Put in these terms, yielding the Wairau appears from the Te Kanae manuscript to be an action that made sense to Ngati Toa, as Grey would probably have understood. The other important factor, mentioned in the same document, was the government's detention of Te Rauparaha and the other Ngati Toa rangatira arrested and detained in July 1846. No one in Ngati Toa could have been unaware of the fact.

It will be noted that the bibliography lists the tangata whenua whenua witnesses who gave evidence for Ngati Toa in the Te Tau Ihu (Northern South Island Inquiry). All of the Ngati Toa evidence was, as was pointed out in legal submissions in that inquiry, consistent in the absolute view that the sale of the Wairau and the Porirua blocks were the price for the freedom of Te Rauparaha and utu for the deaths of the Europeans during the Wairau incident (This includes the evidence Ngaronga Iwikatea Nicholson, Te Waari Carkeek, Matiu Te Rei, Te Ariki Wi Neera). Te Waari Carkeek spoke of the large scale exodus by Ngati Toa from the Wairau following the Wairau incident due to fear of reprisals by the Pakeha.⁶⁶⁴ Both Te Waari Carkeek and Ariana Rene spoke the story of Te Rauparaha's capture, the assistance provided by the Nga Puhi chief Mangonui in his release and the ongoing connections between Ngati Toa and Nga Puhi. The mere pounamu, Hinearī, given by Te Rauparaha to Mangonui was presented by Mangonui's descendants during the hearing. This strong oral tradition within the iwi is confirmed by the historical record.

Henry Tacy Kemp has left an account of the Wairau purchase, which - while painting Grey in somewhat roseate colours - supports to some extent the account given by Wiremu Te Kanae. According to Kemp Grey did indeed persuade Rawiri Puaha to agree to the sale in the interests of harmony and peace:⁶⁶⁵

In 1845 the acquisition of the Wairau Plains took place. Sir George Grey had for a season taken up his residence at Wellington, and had made himself familiar with the facts connected with the Wairau massacre. Te Rauparaha, with his nephews - one of them, Wi Te Kanae, a resident of the Wairau - had been prisoners on board the Calliope, and the way seemed open for a reconciliation. His Excellency was anxious to throw a halo of peace over that disaster, and he thought that by extinguishing the native title it would be acceptable to all the parties concerned. Negotiations were entered upon with Rawiri Puaha, next of kin in succession to Rauparaha and Rangihaeata. He was, moreover, a member of the Wesleyan communion, over whom the Revs. J. Watkin and S. Ironsides were the esteemed missionaries, and a highly intelligent and honourable man....I was instructed to proceed to Porirua, and explain to Puaha the governor's wishes, giving him time to consider the terms of the proposal, and then to invite him to a personal interview at Government House. In a few days he appeared, with certain

⁶⁶⁴ Carkeek, page 10, paragraph 42.

⁶⁶⁵ H.T. Kemp, *Revised Narrative of Incidents and Events in the early colonizing history of New Zealand*, Wilson & Horton, Auckland, 1901.

approved members of his tribe, the Ngatitoas - i.e. brave men - and waited on the Governor, who expressed to him in felicitous language his desire to wipe out the memory of so sad an event, and in such a way as to make it acceptable to the feelings of both races; Rawiri at once complied, leaving it entirely to His Excellency's discretion as to the best way of accomplishing the matter.

Grey's own official report the transactions (26 March 1847), of course, says nothing at all about any of this, and certainly nothing about utu. He was more concerned to justify the expense of the purchase to the British government. Anxious to show that he had not been prodigal with the Crown's money Grey stated that the area purchased (in fact about 608,000 acres) was 'so large that, in reference to its quantity and value, the payment made for it cannot but be regarded as small'.⁶⁶⁶ (Grey later decried the payment to the Smith-Nairn Commission as "very trifling indeed" and "very trifling as compared with the extent of land".⁶⁶⁷)

However Grey's later evidence to the Smith-Nairn Commission, given in 1879, closely accords with Ngati Toa sources. The impression that Ngati Toa agreed to the transaction because they wished to eliminate discord between Maori and Pakeha and - in a sense - make utu to the Crown for what happened in 1843 is abundantly confirmed. Grey said:

This was, I may say, almost entirely a friendly transaction. The payment given to these people was very trifling, indeed. At that time there were three young men there who had very great influence - a man of the name of Puaha, who was one of the best men I have ever known in my life; Thompson, a son of Rauparaha, and Martin,⁶⁶⁸ a nephew of Rangihaeata. These three men were anxious to have a complete settlement made, to prevent disputes arising between their own race and the Europeans, and it was an act of entire good will on their part; the relinquishing of this land for the sum they took. The payment was very trifling compared with the extent of land. Bishop Selwyn had done much good in New Zealand and the present Bishop of Wellington, Bishop Hadfield, spent many years of a devoted life at Waikanae. They had made many natives desirous for peace, and of doing good, and a large section of the natives wished to see the thing settled, and imagined that in disposing of their interest in this land, they saw their way to conferring a benefit on their fellow-countrymen and the Europeans. I remember one occasion when it was necessary to arrest some natives. These men assisted in arresting them, and I saw tears running down their cheeks as they did so, but they considered it a duty and performed the disagreeable act accordingly.

Mr Smith: This land you purchased included the scene of the Wairau massacre?

⁶⁶⁶ Grey to Earl Grey, 26 March 1847, Mackay vol 1., 202; original on CO 209/51, DB 1484-1505.

⁶⁶⁷ Evidence of Sir George Grey to Smith-Nairn Commission, December 5 1879, MA 67/4,

WNA

⁶⁶⁸ Matene Te Whiwhi

- Yes. They felt that very much, and were anxious to make atonement for it. I regarded it more as a giving up of the land for the good of both races than as a purchasing of it.

Grey here gives the impression that selling the Wairau was the chiefs' idea, rather than his, which is not the impression one gets from Ngati Toa evidence, from his own report at the time, or from Kemp's account. But the statement that the transaction was "friendly" and that the younger chiefs desired to benefit both Maori and Pakeha and to make "atonement" for the Wairau certainly fits with the rest of the evidence. Grey's emphasis on the role of missionary advisers should be noted too. Grey was able to trade on the younger chiefs' misplaced sense of guilt.

In her history of Nelson Ruth Allan suggests that although it is possible that that Te Rauparaha himself might have agreed to the sale - that is, if the younger chiefs had been in favour and provided that the price was right - it is safe to assume that Te Rangihaeata would not have agreed under any circumstances.⁶⁶⁹ This view is supported by the evidence relating to the government's efforts to purchase the Rangitikei-Manawatu block. On this occasion Te Rauparaha and Rangihaeata both strongly opposed the sale initially, but once the younger chiefs had agreed to it Te Rauparaha took no further steps to prevent the transaction from proceeding, while Te Rangihaeata remained implacably opposed.⁶⁷⁰ If anything, Te Rangihaeata is likely to have felt even more strongly about the Wairau. On the other hand, of course, the younger chiefs may only have agreed to the Wairau sale in the first place because of Te Rauparaha's detention, a factor which was absent in the case of the later Rangitikei-Manawatu transaction.

Patricia Burns, in her biography of Te Rauparaha, sees Grey as basically having coerced Ngati Toa into the transactions by indicating in some manner that agreeing to the sales was "a condition of Te Rauparaha's release", relying for this on Clarke's opinion of the arrangement:⁶⁷¹

In a furiously indignant letter to the Rev. Henry Williams, George Clarke wrote that the Wairau had been "*wrung* and *wrested*" from Ngati Toa, when they were told that the sale alone would obtain Te Rauparaha's release. Henry Kemp and Henry Clarke had been witnesses to this "disreputable bargain". When Grey was told that the sale would be complete without the consent of Te Rangihaeata, "the Govr. said he was a rebel, and would not treat with him".

⁶⁶⁹ Ruth Allan, *Nelson: A history of early settlement*, 46.

⁶⁷⁰ On the Rangitikei-Manawatu purchase see Boast, *Ngati Toa in the Wellington Region*, 149-

53.

⁶⁷¹ Burns, *Te Rauparaha*, 284.

Rutherford has suggested that if Clarke is right in believing that the Ngati Toa chiefs were basically coerced into selling the Wairau by using Te Rauparaha's detention as a lever the sale of the Wairau looks more like a criminal penalty or an act of confiscation. The transaction.⁶⁷²

partakes of the character of of an act of confiscation in punishment for the 1843 massacre and the 1846 rebellion. The penal aspect of the matter, however, was not disclosed in the despatches, which represented the sale as a symptom of the tribe's pacification and goodwill.

Clarke's letter to Williams is an important clue, but it is also noteworthy that the Ngati Toa sources quoted above do not indicate that Grey wielded the fact of Te Rauparaha's detention in quite as blatant a manner as Clarke suggests. Nor, in fact, would he have needed to: Te Rauparaha's being in custody was hardly something of which Rawiri Puaha and the other chiefs would have needed to be reminded. Grey seems rather to have traded on Maori cultural susceptibilities and on Rawiri Puaha's specifically Christian ones. Selling the Wairau was presented to Ngati Toa's now younger and Christian leadership as *tika* on the basis of something like *utu* and as the meritorious action of good Christians in eliminating a cause of disharmony and discord. It may certainly in addition have been implied or suggested that the sale would in some manner assist in the cause of Te Rauparaha's release; and indeed this question and the broader issue of peace and harmony might well have been connected. Grey may have suggested that with the elimination of such a painful bone of contention such as the Wairau there would now be peace between the two peoples and thus no necessity for Te Rauparaha's continued detention. And somehow or other the Porirua transaction could have been linked with this.

Some of the evidence relating to the connection between the Porirua deed and Te Rauparaha's detention has been reviewed by Anderson and Pickens.⁶⁷³ They have drawn attention to the following:

- the deed did not state that the individuals who received payment were acting on behalf of Ngati Toa as such (which is even more true of the Wairau deed, signed by only three people);
- Te Rangihaeata and Te Rauparaha did not sign the deed and no effort whatever was made to obtain their signatures
- A contemporary report of the transaction in the *New Zealand Spectator* stated that “[d]uring the discussions...on the sale, the natives evinced considerable anxiety

⁶⁷² Rutherford, *Grey*, 94.

⁶⁷³ See Anderson and Pickens, *Wellington District*, 46.

for the release of Te Rauparaha, but they were given distinctly to understand that he would not be liberated”.⁶⁷⁴

- George Clarke, Native Protector at Wellington, regarded the deed as “a disreputable bargain”. According to Clarke.⁶⁷⁵

Thompson, Rauparaha’s nephew, remonstrated against the proceedings but by threats to retain Rauparaha withdrew his remonstrance, and when the Governor was told that the bargain was incomplete without the consent of Rangihaeata the Govr. said he was a rebel and would not treat with him.

While it may not have been, therefore, a situation where Rawiri Puaha and the others were told in so many words that Te Rauparaha would stay in custody unless the Wairau and Porirua blocks were sold – it was probably more subtle than that – the fact was that Grey had deprived Ngati Toa of its traditional leadership at the crucial moment. Te Rauparaha was far away in Auckland, and Grey would not talk to Rangihaeata. The younger Mihanere chiefs were deprived of their advice and counsel. It is hard to imagine either Te Rauparaha or Te Rangihaeata acquiescing in Grey’s designs. Possibly Te Rauparaha himself may have considered some sort of compromise (who can say?), it can safely be said that Te Rangihaeata would never have done so. Ruth Allan is surely right in her observation that Te Rangihaeata would never have tolerated these transactions in any circumstances.⁶⁷⁶

Crown historians who gave evidence in the Te Tau Ihu inquiry agree that the elimination of Te Rauparaha and Te Rangihaeata from having any input into the negotiations was a significant factor. As the Waitangi Tribunal summarised the evidence:⁶⁷⁷

Macky, the Crown’s historian, is largely in agreement with Boast and Phillipson. He argues that, if Te Rauparaha and Te Rangihaeata had agreed to a sale, “it might well have been that the remaining Ngati Toa rights holders would have been persuaded to agree to a sale as well”. Macky admits that, as early as July 1846 (when Te Rauparaha was captured and Te Rangihaeata was resisting Grey’s forces on the Kapiti coast), the two chiefs ‘had been taken out of the equation for any negotiations over Wairau’. At that time, Grey instructed his officials that, in any negotiations over Wairau, ‘if Te Rangihaeata claimed it would be rejected on the grounds of his being in arms and a traitor’. But Macky makes no comment on Grey’s refusal to negotiate with Te Rauparaha and two other chiefs who were detained with him, Te

⁶⁷⁴ *New Zealand Spectator*, 20 March 1847, cited Anderson and Pickens, *ibid*.

⁶⁷⁵ G Clarke, 3 October 1848 (cited in Rutherford, *Grey*, 165-166).

⁶⁷⁶ While the Tribunal has been prepared to state in its preliminary *Te Tau Ihu* Report (2007) that the Wairau deed did not have the authority and consent of all the iwi, it is yet to determine the extent to which duress was a significant factor. See *Te Tau Ihu*, 203.

⁶⁷⁷ Waitangi Tribunal, *Te Tau Ihu*, 202.

Kanae and Tamaihengia. Since these three had not taken up arms against the Crown and were never charged with any offence, they could not have been regarded as rebels.

The provision for reserves in the Wairau deed was very substantial. Mackay calculated that the area of the reserve was 117,248 acres. This substantial reserve area was, however, reduced by the government to virtually nothing as a result of the Te Waipounamu transactions in the early 1850s. One key aspect of the 1847 Wairau deed, mentioned by Grey himself but not (as far as I am aware) in any other source, is that Ngati Toa were given an option to repurchase land within the area sold at the amount of 10s. per acre. Whether there was a similar understanding with regard to the Porirua block itself needs some further research). As a part of this “buy-back” scheme Ngati Toa would have been able to have some of the area purchased re-granted by means of a secure Crown-granted freehold.⁶⁷⁸ Grey says that “I explained to them carefully that in selling the land they only relinquished it to the public, and that they retained the same right as the rest of the public did in the land”.⁶⁷⁹ However he thought that there was “an express arrangement” that Ngati Toa could repurchase which had been reduced to writing. However on his return to New Zealand in 1861 the Ngati Toa chiefs went to see Grey and passed on some disturbing information:

When I returned to New Zealand some of the natives came to see me and complained they had applied for portions of the land and were not allowed to purchase; and the reason distinctly given was that the Europeans in the neighbourhood did not wish to have natives near them...At that time I satisfied myself that the statement was perfectly true, and that they had not been allowed to buy land because of the objection I state, and I consider that a very grievous wrong had been inflicted on them. With regard to the Ngai Tahu purchase, I have no recollection of the boundaries of that block, except that I thought the purchase had been loosely made, and I objected.

The boundaries of the Wairau purchase were stated very vaguely. The coastal boundary ran from “Wairau” to “Kaiapoi” (“beginning at Wairau, running along to Kaiparatehau [sic] (Te Karaka) or Cape Campbell, running along to Kaikoura until you come to Kaiapoi”/”ko Wairau haere atu Kaparatehau, Te Karaka, haere rawa atu Kaikoura, Kaiapoi atu”). When Sir

⁶⁷⁸ There had been some experimentation with such buy-back schemes elsewhere. One, mentioned by Loveridge, was the Hua block in Taranaki in 1854: here the buy-back was apparently very successful: D M Loveridge, *The Origin of the Native Lands Acts and the Native Land Court in New Zealand*, unpublished report to the Crown law office, October 2000, 53-55; see also Ann Parsonson, “The Pursuit of Mana” in W H Oliver and B R Williams (eds), *The Oxford History of New Zealand*, Oxford University Press, Auckland, 1981. 140-167, at 153.

⁶⁷⁹ Grey evidence, MA 67/4, transcription in Boast, *Ngati Toa and the Northern Southern Island*, p 369.

George Grey was asked by the Smith-Nairn commission in 1879 whether he thought that he was buying land “with certain defined limits” Grey’s response was:

No. The impression on my mind was, that I purchased all that they had a right to.

And further:

There were no regularly defined boundaries. They were laid down merely verbally.

To conclude, the stress placed on making “atonement” for the Wairau was a vital part of the discussions and of the context to *both* deeds, mentioned by Ngati Toa, by Kemp and by Grey himself. Also, of course, there was the context of Te Rauparaha’s capture – Rawiri Puaha was obviously worried about him – and Te Rangihaeata’s exile. There was an obvious coercive context to the negotiations. Nor did Grey trouble to try to obtain Te Rangihaeata’s or Te Rauparaha’s agreement to either of the two deeds. The iwi was deprived of their leadership at the critical moment. Finally, as a sweetener, Grey would have stressed that there was a reasonably substantial provision for reserves in both deeds, and that Ngati Toa rangatira would be able to obtain Crown grants by repurchase within the ceded areas. The reserves in the Wairau block especially were substantial, but as will be explained below these were to largely disappear during the Te Waipounamu pre-emptive purchases of the early 1850s.

7.4 Extent of Ngati Toa acquiescence

Another question which needs to be addressed is whether the assent of Rawiri Puaha, Tamihana Te Rauparaha and Matene Te Whiwhi (in the case of the Wairau) or of an only slightly bigger group in the case of the Porirua deed really did amount to a valid and effective consent to the sale by “Ngati Toa” as such. To find so few signatures on deeds of such importance does at least seem to call for explanation. In the case of the Wairau deed the three Christian chiefs may have been the spokesmen for the Ngati Kimihia-Ngati Huia kin network but possibly not at all for other sections of Ngati Toa. While the iwi as a whole might have been willing to endorse anything that Te Rauparaha might have done (even that is subject to qualification) this cannot be simply assumed in the case of these three younger chiefs. In the Te Kanae MS the Wairau deed is paired with the acquisition of some land at Kaiapoi where their own dead lay. The Te Kanae MS claims that while Ngati Toa paid out £200 for the land at Kaiapoi, Ngati Toa did not receive any money for the land at the Wairau. It may be

significant that while in the Te Kanae MS references are usually made to the “chiefs of Ngati Toa” the sale of the Wairau is attributed to Rawiri Puaha “and his tribe” or Rawiri Puaha “and his people”.

According to a report by C.W. Ligar, the Surveyor-General, sent to Grey in March 1847, while the three chiefs certainly were recognised as owners of the Wairau, they were not the only ones. Ligar spoke to representatives of the Maori community at Cloudy Bay who were a mixture of Ngati Toa (this might have included some who were Ngati Rarua, but the distinction may not have been a significant one at this time) and Rangitane (“the latter are the slaves, but one of their number...has acquired much influence”):⁶⁸⁰

The same people gave me the following list of the owners of the district as described above. They are all of the Ngatitua Tribe. They have no particular portion set apart for each, but have a joint interest in the whole: - The consent required of Puka, Nohoroa, Martin [Matene Te Whiwhi], Thompson [Tamihana Te Rauparaha], Puaha, Rauparaha, Nohoroa (Waterhouse), Te Kanae, Rangihaeata, Tamaihengia, Pukeko, Pukekowhatu, and Pikiwau (or Te Whawhanua, a rebel).

Ligar mentioned that the Ngati Awa people from Waitohi (Picton) had recently established cultivations in the Tuamarina area but the Maori people of Port Underwood “drove them off and destroyed their cultivations”.⁶⁸¹ The Port Underwood community was now a shadow of its former self. While in 1840 Dieffenbach had counted 400 Ngati Toa people living in the Port Underwood area by 1847 there were just fifty or so:

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 Ngatitua 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. Some, it seems, had returned, but many had not. Nevertheless a Ngati Toa community certainly continued to exist at Cloudy Bay and the Wairau continued to be regarded as belonging to the Ngati Toa chiefs.

As I pointed out in my earlier report written for the Northern South Island (Te Tau Ihu) Inquiry, the most obvious missing signature on the Wairau deed, of course, is that of Te Rauparaha himself. If the Wairau transaction was a bona fide and willing sale by Ngati Toa of their interests in the Wairau then one might expect Ngati Toa’s great chief to head the list of

⁶⁸⁰ Report by C.W. Ligar, 8 March 1847, Mackay vol I, 203.

⁶⁸¹ Ibid.

signatories. He was, after all, in the government's custody, and could have been located easily. But there is nothing to indicate that the transaction was ever discussed with Te Rauparaha, and this also raises real doubts about the transparency and fairness of the arrangement.

Comments to this effect were agreed with by the Waitangi Tribunal in its *Te Tau Ihu* Report. Indeed the Tribunal regarded the Wairau transaction as a "very serious" breach of the Treaty.⁶⁸²

We find that the Crown purchased the Wairau behind closed doors and from just three Ngati Toa chiefs, knowingly violating the rights of other senior leaders and the tribe. This was an absolute and deliberate breach of article 2 of the Treaty, and of the Treaty principles of reciprocity, partnership, active protection, and equal treatment. Had the Crown had regard to its partnership with Maori, and its obligations under article 2, it would have given effect to their tino rangatiratanga by convening a public hui at or near the district under negotiation (as it did for Pakawau). It would have ensured that the tribe had a chance to consider the Crown's offer and come to a deliberate and informed decision by means of its own customary decision-making mechanisms.

Although, admittedly, the Porirua deed had somewhat more signatories, (eight, as opposed to three), the Tribunal's criticisms apply with equal force to the Porirua deed as well. No public hui took place at Porirua either. The chance of a "deliberate and informed decision" was equally lost.

Evison has made the rather unpleasant insinuation that as a result of the Wairau transaction Rawiri Te Puaha was prepared to support the government militarily against Te Mamaku at Whanganui,⁶⁸³ and that the three signatories to the deed kept all the money themselves - which explains why Matene Te Whiwhi and Tamihana Te Rauparaha were living in comfortable circumstances at Otaki in 1847.⁶⁸⁴ This is only speculation, however. There is no evidence as to what happened to the money, and Matene Te Whiwhi's relative prosperity (which amounted only to his living in "a comfortably furnished house, with tables, chairs, knives and forks, and pictures of the Queen and Prince Albert over the mantel-piece" and being able to provide guests with "butter, milk, eggs, tea, bread and cakes") could have any explanation, and seems to amount to no more than that possessed by the average settler.

7.5 "A large district of land surrounding Porirua": Analysis of The Porirua Deed (1 April 1847)

⁶⁸² Waitangi Tribunal, *Te Tau Ihu*, 202.

⁶⁸³ See Evison, *Ngai Tahu Deeds*, 67 (at least so I understand him to be implying).

⁶⁸⁴ Evison, *Ngai Tahu Deeds*, 67.

A. Introduction

Apart from the Wairau deed, which does not need to be analysed in detail in this report, the key transaction was the Porirua deed of 1 April 1847, by which Ngati Toa sold to the Crown an extensive area from Ohariu (Makara) in the south to Wainui (Paekakariki) in the north and bounded to the east by “the line determined by Mr Commissioner Spain for the Port Nicholson block”. Grey wanted this area for two reasons. The first was the fact that, as with the Wairau (or Port Nicholson itself, for that matter), the Company had already sold sections at Porirua to the settlers. These sections (which included ‘tenths’ reserves) had, as Duncan Moore explains, “originated in the...series of 1841-42 Company surveys and 1842-43 Land Order lotteries as at Port Nicholson and Manawatu, conducted to enable the Company to select their 110,000 acre ‘Port Nicholson neighbourhood’ under their 1841 Charter”.⁶⁸⁵ To Grey it was obvious that the settlers had to be placed in possession of the sections for which they had paid,⁶⁸⁶ which could only be done by means of a further and separate extinguishment of Ngati Toa's title by the Crown. This extinguishment had to be wholly separately done by the Crown as Spain had repudiated the Company's Kapiti deed and had concluded that the Company was not entitled to a Crown grant at Porirua. The Porirua deed included most of the Porirua sections earlier sold by the Company. In Grey's words:⁶⁸⁷

Under such circumstances I determined to purchase, on behalf of the Government, from the Ngatitua Tribe, a large district of land surrounding Porirua, *including as much of the land which had previously been disposed of by the New Zealand Company as I could induce the Natives to alienate, thus meeting, as far as practicable, the specific claims of European settlers;*⁶⁸⁸ and in addition to the land so acquired by the New Zealand Company, I determined to include within the limits of the purchased land a very extensive block of country to meet the probable prospective requirements of the Government and the settlers.

Grey obtained McCleverty's advice as the amount of compensation to be paid for Porirua.⁶⁸⁹

⁶⁸⁵ Moore, *Questions Regarding the Port Nicholson Purchase*, Wai 145 Doc#I7, 39.

⁶⁸⁶ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 202; original on CO 209/51, CFRT Te Tau Ihu DB 1484-1505 (“[i]n both of these districts the Company had actually disposed of large quantities of land to European settlers whom it was of course desirable if possible to place in possession of the Sections which they had purchased”).

⁶⁸⁷ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 203; CO 209/51.

⁶⁸⁸ *emph. added.*

⁶⁸⁹ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 203; also in Cmd 892/1847, *Papers Relative to the Affairs of New Zealand*, 1847, in IUP, GBPP/NZ, vol 6, 7-9. In a subsequent memorandum to Earl Grey, 7 April 1847 (*ibid*, 14-17, at 15) Grey again notes that the sum of £2000 for the purchase price was fixed by McCleverty: “I therefore took his opinion upon this point, as I thought I ought to do, and he stated that he considered the natives entitled to the sum of £2000 for the land they were about to surrender in the Porirua district. I, upon reflection, saw no reason to differ

The Ngatitōia Tribe, after securing an extensive reserve for themselves in one continuous block, agreed to dispose of the tract of country I required, which included the whole of the sections the New Zealand Company claimed, with the exception of about sixteen. As Lieut.-Colonel McCleverty had been directed by Her Majesty's Government to decide upon the reasonableness of the price paid to the Natives for land, and he was then at Wellington, I thought it right to take his opinion as to the sum which should be paid for this tract of land. He named the sum of £2000, which, under the all the circumstances of the case, appearing to me to be a reasonable and proper sum, I agreed to pay it to the Natives...

But the existing surveys and reserves were not all there was to it. Grey also, however, had wanted Porirua for its strategic value:

...[I]n a military point of view, the possession of a great part of the Porirua District, and its occupation by British subjects, were necessary to secure the town of Wellington and its vicinity from evil-disposed Natives, as it was only by the occupation of the Porirua District that the various tracks leading across the woody mountains which lie between Porirua and Wellington could be effectively closed against an enemy.

The English text of the deed begins with a description of the external boundaries of the block, which ran from Ohariu to Wainui (Paekakariki):⁶⁹⁰

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 I confess to having a great deal of difficulty in following from the text, although they seem to be identified with reasonable clarity in an attached sketch plan (which, however, shows only the reserves, not the block boundaries as a whole):

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, and comes out at the house belonging to Mr Jackson, running along the Water edge. – The

from this opinion, and therefore agreed to pay that amount.”

⁶⁹⁰ 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. A copy of the original handwritten text is on the PRIMARY SOURCES;MISC file.

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.

In the case of the Porirua deed, the government got the inland areas, but it also got the main communications points, these being the narrow point of the harbour entrance at Mana-Paremata – where the road and rail bridges are today, all the lands around Pauatahanui harbour and the Horokiwi valley, this being the main route north through the valley and over Paekakariki Hill. Te Rangihaeata's lands at Pauatahanui were all taken by the government. These areas were also mostly the areas that had already been allocated by the New Zealand Company surveyors as country sections, which ran right up the Horokiwi valley and which

also surrounded the Pauatahanui and Porirua arms of the harbour.⁶⁹¹ A glance at the cadastral maps of the area today shows that the old New Zealand Company country section boundaries of 100 acres each are still mostly intact as modern titles, running up either side of the Horokiwi Valley Road for example. The area between the coast and the Horokowi valley had not been surveyed out by the New Zealand Company and for the time being was left in Ngati Toa ownership. At Porirua itself it was necessary for some rearrangement of the allocated country sections to be done.

Mindful, perhaps, of the difficulties that had arisen over Ngati Rangatahi's cultivations in the Hutt Valley in 1846, the deed provided specifically as follows:

If any of our cultivations that are above Taupo should fall within the boundary of the Governor's Land, they are to be returned to us.

Lastly, the deed recites the consideration for the purchase (£2000):

The payments for these lands are these Two thousand pounds in money – One thousand to be given us on the first day of April 1847. Five hundred pounds on the first day of April 1848. Five hundred pounds on the first day of April 1849 which being added together makes Two thousand pounds which concludes the arrangement.

Payment in instalments was deliberate. Grey thought that his system of “annual payments” as contrasted with “giving at once large quantities of merchandise” – a reference, no doubt, to New Zealand Company practice – would have “a powerful influence of the general advancement of the Natives in civilization”.⁶⁹² Grey proudly announced to the British government that with the Porirua and Wairau purchases he had brought the land problems of the “southern portions of New Zealand” to an end.⁶⁹³

B. The Porirua Deed, Existing Tenths Reserves and New Zealand Company Sections

⁶⁹¹ As is apparent from the sketch map of the Port Nicholson country districts made in 1843 by W M Smith and S C Brees (see copy in PRIMARY SOURCES: MISC file).

⁶⁹² Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 203; CO 209/5.

⁶⁹³ *Ibid.*

There were already native reserves under the Company's 'tenths' scheme in existence at Porirua. But Grey simply ignored these allocations and made completely new reserves in the block, as Moore has explained:⁶⁹⁴

The Company's Reserve scheme was largely in abeyance from late 1842 until mid-1848 except for a few leases to settlers in and near Wellington and Petone proper. The 1500 acres at Porirua probably afforded little or no cause for interest amongst Maori in this period....Given [the] 'double invalidity' of the Porirua reserves – the failure of *both* the underlying purchase and the wider Reserves scheme – Governor Grey simply ignored them in his 1847 Porirua purchase.

That is, the existing reserve allocations already in existence under the 'Tenths' scheme at Porirua simply were treated as irrelevant, and were supplanted by the large reserve blocks set out in the Porirua Deed itself. This involved a process of readjustment. A report by Swainson, surveyor, to the Under-Secretary of the Native Department in 1867 on the New Zealand Company reserves explains what was done at Porirua:⁶⁹⁵

The Porirua purchase in dispute between the Company and the Natives was finally settled by Colonel McCleverty in 1847, and the reserves previously selected as such by for the Natives were either retained, with other lands, or exchanged for lands selected by purchasers. These reserves have been hitherto dealt with by the Natives, except in cases where they have been brought under the Native Reserves Act by assent.

The new reserve areas at Porirua meant that some of the former Tenths allocations at Porirua were simply lost ("thrown up"), while at the same time settlers whose allocations were within the new reserve boundaries were placed "at the disposal of colonists whose original Porirua allotments had fallen within the areas Grey had excepted for Maori".⁶⁹⁶ Moore sets out the

⁶⁹⁴ Duncan Moore, *Questions Regarding the Port Nicholson Purchase: Surplus Lands, Purchase Consideration and Title to Maori Reserves*, Wai 145 Doc#17, 40-41.

⁶⁹⁵ Turton, *Epitome of Official Documents*, George F Swainson, Report, 13 August 1867, Enclosure in D No 113, at p 65.

⁶⁹⁶ Moore op.cit., 41. Note also Moore's fn. 84 at *ibid* which gives the full documentation which deals with this point:

The Native Reserves which fell within the excepted area around Titahi Bay are shown in Brees' 1843 "Sketch of the Country Districts in the Vicinity of Port Nicholson," Wai 145 Doc# I3(e), and in [Native Reserves] Commissioner St Hill's 31 December 1847 "Account of Native Reserve Lands in the New Zealand Company's First and Principal Settlement," in Wai 145 Doc#A40 pp 301-304. Note, on the pakeha side of this coin, McCleverty threw up the *settlers'* sections which fell within the excepted areas. McCleverty's original list of affected sections was attached to his original report recommending the Porirua grant: a copy in Wai 145 Doc#C1 (c)pp 311 and 320-23. David Lewis, Clerk of New Zealand Company Land Office soon after produced a "Register of Sections Chosen in lieu of those excepted in the Crown Grant of the Porirua District," showing 23 such sections [numbers omitted].

details of these adjustments. He points out that “no concerns appear to have arisen later regarding their reversion to the Company after the 1848 grant”.⁶⁹⁷ However:

...given that these Reserves formed a part of the “Tenth” quantum which featured so prominently in the proceedings and policies which brought initial peaceful possession of the Port Nicholson harbour, the loss of the Porirua reserves perhaps raises similar issues as those at Porirua.

The redrawing of the tenurial boundaries also impacted, as mentioned above, on surveyed country sections that the Company had already allocated to settlers. Grey seems to have done the best he could to make sure these sections were included in the area acquired by the Crown (a clear demonstration, if one were needed, as to what his priorities were). The Company claimed about 270 sections in the Porirua-Pauatahanui area, its ‘claim’, however being the most dubious one possible, that is the 1839 deed. Acting on nothing but the strength of that, the sections had been surveyed off and allocated. Grey saw to it that all but sixteen of these sections became available to the Company. The holders of the 16 sections now included in the Maori reserve areas had to be content with being able to select equivalent areas out of the unsurveyed part of the block.⁶⁹⁸

The Company (as nearly as I can ascertain) claimed, in the Porirua district, 270 sections of land, a great number of which had been sold to Europeans. Under the arrangement I have made, I have secured for the Company all these sections with the exception of about 16. These 16 sections the Company are still at liberty to purchase from the Natives if the natives will dispose of them to the Company, which I doubt, as they would not sell them to the Government. In addition, however, to the surveyed land now purchased by the Government, there is a large tract of unsurveyed land, from which the Company are free to select any portions they think proper. I thought, therefore, that I had concluded a most advantageous arrangement for Her Majesty’s European subjects; I can, at least, say it was the best I could make.

C. *The signatories of the Porirua Deed*

The deed was signed by eight Rawiri Puaha, Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Nopera Te Ngiha, Ropota Hurumutu and Paraone

⁶⁹⁷ Duncan Moore, *Questions Regarding the Port Nicholson Purchase: Surplus Lands, Purchase Consideration and Title to Maori Reserves*, Wai 145 Doc#17, 42.

⁶⁹⁸ Grey to Earl Grey 29 March 1847, Cmd 1847/892, GBPP (IUP), NZ, vol 6, pp 14-17 (in Appendix).

Toangina for Ngati Toa. The signatures were witnessed by by McCleverty, by two other military officers (Captain T Armstrong of the 99th Regiment and Lieut. L R Elliott, also of the 99th Regiment, and by the Army Interpreter. W.F.G. Servantes. These four also signed the receipt for the payment of the first instalment and Servantes certified the receipt separately (“I certify that I interpreted the above receipt to the signers of the same, in presence of the persons who have witnessed their signature). Each signatory was handed £100 by McCleverty, presumably to share with others, or not, as they chose. Two other chiefs, Te Waka Kotua and ‘Tapui’ were also supposed to have signed the deed, but were absent on the day the deed was executed. They were, however, allocated £100 each as well.⁶⁹⁹ Servantes’ report on the transaction refers to the ten payees, including the two who did not sign on the day, as ‘chiefs’.⁷⁰⁰

It does appear that some people who considered they had a rightful share to some of the purchase money did not actually receive any, and must have complained about it to Servantes, or to someone, as Servantes mentions this point in his report to the Colonial Secretary at Wellington. His remarks on this point are not, however, very clear.⁷⁰¹

With reference to any subsequent claims that may have arisen, I beg to state that no new claims whatever have been made by any parties to the land sold on that occasion, but that certain natives to whom the chides that received the first instalment did not distribute any portion of it have made a claim to a share of the purchase money, they are as follows:-

1. Te Warehau
2. Hoani Te Okoro

all the relatives of Martin [Matene Te Whiwhi] and Thompson [Tamihana Te Rauparaha], and one or two of those of Paraone Toangira, all of which claims I consider valid.

D. The Porirua Deed Reserves

The new reserve areas within the Porirua block have their own complicated histories. The largest, northern reserve, lying between Plimmerton and Paekakariki, was subsequently divided up into a number of separate Native Land Court blocks, which will be discussed in Report No 2. These blocks are:

⁶⁹⁹ Servantes to Colonial Secretary, 27 March 1847, (reprinted in Turton?), copy on PRIMARY SOURCES: MISC file.

⁷⁰⁰ Ibid.

⁷⁰¹ Ibid.

- Taupo,⁷⁰² partitioned into Taupo 1 and 2.⁷⁰³
- Motuhara;
- Hongoeka;
- Hakopua (later partitioned into Hakopua East and Hakopua West);
- Wairaka; and
- Pukerua.

The second of the reserve areas was itself partly purchased by deed in 1865 (as the Papakowhai Block: discussed separately below), and the remaining area of reserve was then split into two areas, called for some reason Schedule D (the northern part, also known as the Okawhai Block), and Schedule C, the southern section, then became known (as it still is today) as the Aotea block. Title was investigated in 1869 and the blocks were formally partitioned in 1881.⁷⁰⁴ After that the blocks were sold by the Ngati Toa grantees privately. The other main reserve area was Whitireia, famous in New Zealand legal history for the much-litigated gift of land to the Church of England for a school.

7.6 “A justification of the perpetration of that dreadful tragedy”: The immediate aftermath of the Porirua and Wairau deeds

One of the main themes of this study has been the close connections that existed between the events that took place at the Wairau and the developments at Porirua. This connection is once again manifest in the immediate aftermath of the transactions. To Grey, the acquisition of the two blocks was definitely a single package arranged at more or less the same time. In both blocks, as has been explained earlier, the New Zealand Company had sold sections to settlers and a key objective of both transactions, although not of the course the only one, was to put those settlers into possession. This allowed the New Zealand Company to extricate itself from the embarrassing situation into which it had fallen following Spain’s reports and Fitzroy’s grants: that is, the Company had sold sections in areas to which it could not get a grant. (It was the Company which was to blame for the predicament in which it found itself in mid-1845, needless to say.)

⁷⁰² A certificate of title to Taupo block was made by the Native Land Court sitting at Gisborne (for some reason) on 11 August 1875 (order on WN 109 [Taupo Block Order File], Maori Land Court, Wanganui. The Taupo block covered 2580 acres. The block was vested in Matene Te Whiwhi, Tamihana Rauparaha, Hoani Te [Okoro?], Rakapa Kahoki, Erenora Tungia, Hori Te Aratangata, Hohaia Pokaitara, Raiha Puaha, Hohepa Horomona, Wi [Hura?], Wi Parata h.c. and Hemi Matenga h.c.

⁷⁰³ Taupo 2 had the status of a Native Reserve: see Natives Reserves Act Amendment Act 1896, Second Schedule. By s 32 of the Maori Land Claims Adjustment and Laws Amendment Act 1906 Taupo No. 2 became a scenic and historic reserve under the Scenery Preservation Act 1903.

⁷⁰⁴ (1881) 1 Wellington MB, (2 July 1881)

Once the Porirua and Wairau deeds had been executed, Grey immediately informed Wakefield. On 23 March 1847 Grey forwarded tracings of both blocks to Colonel Wakefield and informed him that Crown titles would be issued to whatever lands the New Zealand Company in either block the Company chose to select. Grey told Wakefield that the Company would, however, have to pay for any land that it chose to take up. Significantly Wakefield thanked the Crown for assisting the Company in making the land at the Wairau and at Porirua available to its selectors. However, and perhaps rather ungratefully, he now also chose to complain about the Company's being asked to partly compensate the government for the trouble and expense it had gone to on the Company's behalf. On 27 March Wakefield wrote to the Colonial Secretary (Richmond) as follows.⁷⁰⁵

I have the honor to acknowledge the receipt of your letter of the 23rd instant including the tracings of the blocks of land including Wairau and Porirua recently purchased by the Government and acquainting me that Crown titles will be issued to the New Zealand Company for any land I may, under the regulations, select in the district.

You at the same time acquaint me that it must be understood that the New Zealand Company will repay such portion of the respective sums paid for the land so selected as may be required by the Home Government.

I have to request you to make my acknowledgment, on the part of the New Zealand Company, to his Excellency for the the cordial assistance afforded by him to the Company to secure the necessary to fulfil their engagements [ill.] their colonizing operations, as evinced in his late proceedings.

Nevertheless, I feel it to be my duty, whilst bowing to His Excelelncy's decision, to respectfully express my regret that the Company should be rendered liable for the payment of large sums of money under the circumstances of the recent acquirement of land.

Wakefield was also unhappy about the exchanges that now had to take place at Porirua. The reserves in the Porirua deed did not coincide with the sections already surveyed out and allocated to settlers. Sixteen of the surveyed and allocated sections now went into the reserve areas as identified on the Porirua deed plan, with the Company to receive other land in exchange.

The land offered to the Company in the Porirua District in exchange for sixteen sections that have been surveyed, selected by purchasers from the Company and been the subject of numerous contracts and engagements and are now reserved for the natives, is not known to contain any merits either of quality or position to render the choice of it available for the

⁷⁰⁵ William Wakefield to Richmond, 25 March 1847, enclosure on CO 209/52, CFRT Te Tau Ihu DB 1454-72; also printed in Cmd 892/1847, *Papers Relative to the Affairs of New Zealand*, 1847, in IUP, GBPP/NZ, vol 6, 17-18.

purposes of effecting an exchange for that kept for the natives. And if the owners of the sections so retained should, as I cannot but consider probable, decline to accept such an exchange when offered to them, the Company would be paying heavily for but a partial settlement on this day, of a question that has been some years in abeyance. And [ill.] this, I [ill.] His Excellency in the conversation in which he verbally acquainted me with this arrangement, that I should feel it my duty to protest against the award of Mr Spain on which, I presume, the Government have proceeded, so as to relieve the Company from responsibility to the owners of the sections, which the Crown by its own act had thus taken out of their possession...

However it was the Wairau, above all, that Wakefield was unhappy about. Even now, he continued to insist that the Company had a sound claim to the Wairau and that the Nelson settlers who died there had fallen in the cause of supporting the Company's just claim against "unlawful violence". Not surprisingly, perhaps, Wakefield was still bitter about the Wairau and unable to concede that the Company was in any way responsible for what had happened:

[T]he payment of three thousand pounds for the block on the other side of the Strait presents a graver point of objection than in the case of Porirua. It does not perhaps become me to question the propriety of that arrangement, if his Excellency had been pleased to take upon himself the responsibility of it, or had only required the Company to reimburse the Government in respect of such land as they might select outside what may be called the Wairau District. But when I find not only that district included, as apart for which a very large sum of money is paid by the Crown, but the Company desired to repay the proportionate amount for it, I cannot but remind his Excellency that the Company's claim to the whole district has never been investigated, as the late Commissioner of Claims, Mr Spain, has publically admitted in his official report, and respectfully but earnestly submit that the payment of this sum, not to resident natives in actual enjoyment of the land, but to the very men who savagely murdered our countrymen at Wairau now nearly four years ago, is tantamount to a declaration of the invalidity of that claim without investigating it, and therefore to a justification of the perpetration of that dreadful tragedy. I cannot but contemplate that after all the struggles the Company have made to vindicate their claim to the Wairau and the memory of those who fell in supporting it against unlawful violence, they will regard in the same light the arrangement which His Excellency has been pleased to make...

Grey, no doubt inwardly cursing the Company and Wakefield, responded via Richmond that whether the Company chose to take up (and pay for) the grants at Porirua and Wairau was entirely its own business. He informed the New Zealand Company that its concerns would be referred to the British government.⁷⁰⁶ Grey stressed that he had done the

⁷⁰⁶ Grey to Richmond, 7 April 1847, CO 209/52, CFRT Te Tau Ihu DB 1465-72:

best he could to protect the interests of the Company's settlers, an important indication of what his priorities were:

I can only say that I have at a great expense of care, anxiety and trouble, made the best arrangement which, under all the circumstances of the case, it was in my power to conclude; that I hoped in so doing I had concluded an arrangement which would have [protected?] the interests of the Company's settlers, and of the Colony generally, and that if Colonel Wakefield thinks proper to delay the survey of the land, and the placing of the Company's settlers in possession of their Sections, until he receives further instructions from England, it is in his power to do so, but the local Government will under these circumstances, not be responsible for the delay...

As far as Grey was concerned, the Company could now proceed to select land at the Wairau or not, as it chose. But he felt he had done all he could do to protect the Company's interests at Porirua and the Wairau.

Grey also reported to the British government on the Company's complaints, pointing out that in return for the exchange at Porirua the Company there was now "a large tract of unsurveyed land, from which the Company are free to select any portions they think proper".⁷⁰⁷ Clearly Grey felt some justifiable irritation with the Company, considering all the trouble he had undergone on its behalf. "I thought", he wrote, "that I had concluded a most advantageous arrangement for Her Majesty's European subjects; I can, at least, say it was the best I could make".

When seen against the capture of Te Rauparaha, the exile of Te Rauparaha, and the Porirua and Otakou deeds, it is apparent that the Wairau and Porirua deeds formed part of a turning-point in New Zealand history. According to Alan Ward:⁷⁰⁸

In 1848 Governor Grey granted the New Zealand Company the Porirua Block (apart from 10,000 acres of reserves), the whole of the Otakou purchase, and the Nelson block of about 2 million acres within the Wairau purchase. British colonisation of New Zealand was now well and truly launched, and the dominance of Ngati Toa and their allies in Cook Strait had been broken.

In reference to a letter which was addressed to you by the Principal Agent of the New Zealand Company...on the subject of the recent purchase of land by the Government, including Wairau and the Porirua district, I have to request that you will inform Colonel Wakefield, that I will by the earliest opportunity transmit a copy of his letter to Lord Grey, in order that Her Majesty's Government may be able to decide upon the several questions that he has raised.

⁷⁰⁷ Governor Grey to Earl Grey, 7 April 1847, in Cmd 892/1847, *Papers Relative to the Affairs of New Zealand*, 1847, in IUP, GBPP/NZ, vol 6, 14-17, at 15.

⁷⁰⁸ Ward, *Unsettled History*, 106.

7.7 The Wairau and Porirua Transactions: Raupatu *avant la lettre*?

A. Introduction

The concept of ‘raupatu’ in New Zealand is particularly linked with the New Zealand Settlements Act 1863 and the confiscations in the Waikato, South Auckland, Taranaki, Tauranga, the eastern Bay of Plenty, and Hawkes’ Bay that were made pursuant to the legislation and its various amendments.⁷⁰⁹ Also brought under the framework of ‘raupatu’ are confiscations made in the Poverty Bay region, although as it happens these were not made pursuant to the New Zealand Settlements Act. Although there is still no full-scale published history of the New Zealand confiscations in print, a number of the New Zealand Settlement Act confiscations have of course been reported on fully by the Waitangi Tribunal.⁷¹⁰

What, however, is ‘confiscation’? It is best thought of as a response to perceived acts of ‘rebellion’ by which the ‘rebels’ are punished by the loss of land *as part of a policy of coercive military subjugation*. This, rather than the legal form in which the confiscation happens to embodied, is what is of principal significance. The New Zealand Settlements Act 1863 was merely the vehicle for a confiscation *policy*.

One obvious link between the government’s acquisition of the Porirua and Wairau blocks from Ngati Toa and the later confiscation policy that was developed in the early 1860s is the key role played in both by Governor Grey. Grey’s role in the events in the Hutt Valley and at Porirua was critical, and has been documented fully in this report. The confiscation project of the 1860s first arose by means of a memorandum of 5 May 1863 from the premier,

⁷⁰⁹ The New Zealand Settlements Act 1863 produced its own inevitable sequence of amending and supplementing Acts, these being the New Zealand Settlements Act Amendment Act 1864, the New Zealand Settlements Amendment and Continuance Act 1865, the New Zealand Settlements Amendment Act 1866, the Friendly Natives’ Contracts Confirmation Act 1867 and the Confiscated Lands Act 1867. The various New Zealand Settlements Acts confiscations all led to their own supplementary enactments. At Tauranga, for example, there was the Tauranga District Lands Act 1867 (on which see the High Court decision in *Faulkner v Tauranga District Council* [1995] 1 NZLR 357). The main enactments relating to the separate East Coast quasi confiscations are the East Coast Land Titles Investigation Act 1866, the East Coast Land Titles Investigation Act Amendment Act 1867, and the East Coast Act 1868. Separate legislation was subsequently enacted specifically relating to Poverty Bay: see chapter VIII below.

⁷¹⁰ There is no published full-length study of confiscation in New Zealand comparable with, say, Nicholas Canny’s classic study *Making Ireland British 1580-165*, (Oxford University Press, New York, 2001) and this is a major gap in the historiography. The Waitangi Tribunal has now reported on confiscation in Taranaki (Wai 143:1996), the Eastern Bay of Plenty (*The Ngati Awa Raupatu Report*, Wai 46, 1999), Tauranga (*Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claim*, Wai 215, 2004), Hawkes Bay (*The Mohaka ki Ahurir Report*, Wai 201, 2004) and Gisborne (*Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, Wai 814, 2004). Each of these inquiries generated a substantial volume of research. The Waikato confiscation, however, was settled between Tainui and the Crown without a Waitangi Tribunal Inquiry, with the result that far less is known about the Waikato confiscation, the most important of the confiscations, than about any of the others.

Domett, to Governor Grey.⁷¹¹ At first confiscation was intended to be relatively restricted. In a sequence of memoranda between Grey and his Ministers, however, it gradually became more and more elaborate. Grey had already implemented a scheme of confiscation and military settlement in the eastern Cape Colony, and aspects of this South African model came to be applied in New Zealand. In its final, elaborated form, the planned confiscations in New Zealand involved a large-scale settlement of roads and military settlements underwritten by substantial borrowing in London.⁷¹² A comprehensive legislative package was necessary to implement the whole affair. There were critics of the process right from the beginning, some of whom were acutely aware of the rather discouraging precedents elsewhere in the empire. Sir William Martin, former chief justice, published a paper in 1863 in which he argued that the history of Ireland showed “how little is to be effected towards the quieting of a country by the confiscation of private land”. All that resulted was a “brooding sense of wrong”.⁷¹³

B. *Confiscation as Imperial Practice and Policy*

By the time it came to be applied in New Zealand and South Africa in the nineteenth century, confiscation had already had a long history, most especially in Ireland. Ireland is a famous example of a colony, or, perhaps, of one of the Crown's ‘multiple kingdoms’,⁷¹⁴ in which confiscation of land and military settlement were important planks of government policy, roughly in the period from 1550 to 1700. Ireland is an important source of coercive precedent within British imperial history as a whole. There were many links between English ‘plantation’ in Ireland and colonisation in North America. Ireland, writes J H Elliott, “was both kingdom and colony”, and “constituted a useful testing ground of empire”.⁷¹⁵ There were

⁷¹¹ Hazel Riseborough *Days of Darkness: Taranaki 1878-1884* (Allen & Unwin/Port Nicholson Press, Wellington, 1989) 13.

⁷¹² On the evolution of the confiscation programme in New Zealand see B J Dalton *War and Politics in New Zealand 1855-1870* (Sydney University Press, Sydney, 1967), 211-219; Riseborough, *Days of Darkness*, 13-30; and Waitangi Tribunal *The Taranaki Report: Kaupapa Tuatahi Wai* 143 (1996).

⁷¹³ Sir William Martin *Observations on the Proposal to take Native Lands under an Act of the Assembly* reprinted in 1864 AJHR E-2, 7-8.

⁷¹⁴ The perennially fascinating issue of the origins of the great civil wars which took place in the British Isles in the period from 1642-1651 is of course a subject of central importance in British historiography. Various explanations have been put forward and the historiography has now reached such a level of complexity that it has become a subject of historical inquiry in its own right. The most recent attempt at a grand synthesis is now Austin Woolrych *Britain in Revolution 1625-1660* (Oxford University Press, Oxford and New York, 2002). Woolrych's account is strongly marked by the so-called ‘multiple kingdoms’ approach to this most embattled and elaborate of historical debates, which involves a tendency to emphasise the extent to which events in the ‘three kingdoms’ joined in the person of King Charles I - Ireland, Scotland and England - impacted on one another. For a similar emphasis see Conrad Russell *The Fall of the British Monarchies 1637-1642* (Oxford University Press, Oxford, 1992); and Jane H Ohlmeyer *Civil War and Restoration in the Three Stuart Kingdoms* (Cambridge University Press, Cambridge, 1992).

⁷¹⁵ Elliott, *Empires of the Atlantic World*, 23. Elliott emphasises that it is “no accident” that those Elizabethans most heavily involved in plantation in Ireland (Sir Humphrey Gilbert, Sir Walter Raleigh, Ralph Lane and others) were also those “most active in developing the first American projects” (ibid,

three main waves of confiscation in Ireland. The first, following earlier, more limited Tudor policy of ‘surrender and regrant’, by which Irish chieftains were required to surrender their titles to the Crown and receive them back as freeholders, and thus under Crown grant,⁷¹⁶ came in the first decade of the seventeenth century, after the Crown's victory over the O'Neill leaders of the Ulster rebellion. The second came in mid-century, a particularly ruthless programme following Parliament's final victory over its English, Scottish and Irish enemies during the 1640s. The last wave came in the 1690s after the defeat of James II's forces by William of Orange at the battles of the Boyne and Aughrim. This Irish background is mentioned in order to demonstrate that ‘raupatu’ (confiscation) was not a unique phenomenon restricted to the operation of the New Zealand Settlements Acts after 1863: it was, rather, the other way round. Confiscation was a tried and true aspect of imperial policy, and the New Zealand Settlements Act were just one manifestation of it.

C. *Applications to Ngati Toa*

Ngati Toa, or a section of the iwi at any rate, was perceived to be in a state of rebellion against the Crown and were made to pay for this transgression in land. To see Ngati Toa's land loss as a de facto confiscation of land before the enactment of the New Zealand Settlements Act in 1863 is not a new interpretation: in fact it was advanced by Professor Rutherford in his biography of Grey published in 1961.⁷¹⁷ After citing some comments of George Clarke's⁷¹⁸ Rutherford continues:⁷¹⁹

On this interpretation, the acquisition of the Wairau block partakes of the character of an act of confiscation in punishment for the 1843 massacre [i.e. the Wairau] and the 1846 rebellion. The penal aspect of the matter, however, was not disclosed in the despatches, which represented the sale as a symptom of the tribe's pacification and goodwill.

24). He draws some suggestive parallels between the West Country-Ireland connection of adventurers and colonisers with the earlier linked family groups in the province of Extremadura involved in Spanish colonisation in the 16th century.

⁷¹⁶ On surrender and regrant in the Tudor period see especially Steven Ellis *Ireland in the Age of the Tudors* (Longman, London and New York, 1998) 5-6, 150-153, etc. Surrender and regrant in the Tudor period is particularly associated with the governorship of Anthony St Leger, Deputy and Lord Deputy in Ireland in the period 1544-1556. On confiscation in the first half of the 17th century see especially Canny, *Making Ireland British*.

⁷¹⁷ J Rutherford, *Sir George Grey K.C.B.: A Study in Colonial Government*, Cassell, London, 1961.

⁷¹⁸ George Clarke, 3 Oct 1848, Williams MSS, cited Rutherford, *Grey*, 165-66: Henry Kemp and Henry Clarke were witnesses to this disreputable bargain...Thompson, Rauparaha's nephew [his son, in fact] remonstrated againsts the proceedings but by threats to retain Rauparaha withdrew his remonstrance, and when the Governor was told that the bargain was incomplete without the consent of Rangihaeata the Govr. *said that he was a rebel and would not treat with him* [emphasis added].

⁷¹⁹ Rutherford, *Grey*, 166.

Rutherford here characterises very well the different ways in which grey represented the transactions to the imperial governments and the ways in which they were represented to Ngati Toa themselves.

Grey had indeed threatened Te Rauparaha with confiscation of the land of the “rebels” in April 1846, no doubt one of the reasons why Te Rauparaha felt he had to be circumspect in his dealings with the government. In a sense Grey carried out this threat by refusing to enter into any discussions with Te Rangihaeata and his supporters in 1847 over the purchases, on the grounds that they were “rebels”. Te Rangihaeata received none of the payment for the blocks, nor were any reserves made for him. This is clearly at least a *partial* confiscation of the interests of some of Ngati Toa. More broadly, however, there is the coercive, militarised dimension of the whole of the Crown’s dealings with Ngati Toa in 1846-7. This included the military build-up in Wellington in early 1846, the use of troops to intimidate Ngati Tama and Ngati Rangatahi to leaving the valley, the military demonstrations that Grey made to Ngati Toa on the west coast, the construction of military blockhouses along the road between Porirua and Wellington, the establishment of an army base at Paremata, the use of proclamations of martial law (which extended to Ngati Toa), the use of armed forces to capture Te Rauparaha and his transportation from the district in a naval steamer, an armed attack on Te Rangihaeata’s base at Pauatahanui, and finally a military execution of a Maori “rebel” and the transportation of others under martial law as a cloak of legality. The coercive and military dimension of the acquisition of land could not be more plain. The fact that the blocks were not taken under the New Zealand Settlements Acts is in many ways an accident of history.

7.8 The Finalisation of the Wellington Crown Grant and Ngati Toa

At the same time as the campaigning against Te Rangihaeata and the detention of Te Rauparaha the convoluted history of the formation of the Wellington grant was entering into its final stages, and this process had very significant implications for Ngati Toa *in the Wellington Crown grant area*. It will be recalled that the New Zealand Company had declined to uplift Fitzroy’s 1845 grant and had never been prepared to accept it at any stage. On 27 January 1848, following the ‘McCleverty awards’, Governor Grey issued a new grant to the New Zealand Company. This was a critical step with very significant implications for Ngati Toa. The new grant was for a much bigger area than the first (Fitzroy) grant of 1845. The boundaries of the 1848 grant are shown in the various maps included in the Waitangi

Tribunal's *Te Whanganui a Tara* report.⁷²⁰ The area granted was a vast region which included the entire coast south of Ohariu, all of Port Nicholson, the Hutt Valley, and a very substantial area east and south of the Hutt Valley: in fact it was the *whole* of the 1839 purchase area as extended to include the Ohariu-Terawhiti area in 1844.⁷²¹ While Fitzroy's 1845 grant followed Spain's award and confined the grant to 71,900 acres (less 'tenths' and pa, cultivations and urupa) Grey's grant was for an area of 209,247 acres. It was this grant which formed the southern boundary of the Porirua purchase of 1848.

Within this very substantial area there were various categories of reserves, including 'tenths' reserves and pas and cultivations still in Maori ownership. These have been tabulated already by the Waitangi Tribunal in its *Whanganui a Tara* report based principally on evidence presented to the Tribunal by Duncan Moore. About 20,700 acres within the boundaries of the grant were reserves. The Tribunal's analysis is as follows:

	CATEGORIES OF RESERVED LAND WITHIN 1848 GRANT	AREA (a.r.p.)
1	Reserves in town of Wellington, cultivations on town belt, Te Aro Pa	335.3.13
2	Pa and cultivations not surrendered on rural 'settlers sections'	113.2.18
3	Reserved blocks on unsurveyed land	14,340.3.28
4	Country Maori tenths reserves	4200.0.0
5	West Coast additional reserves	770.0.0
6	Grey's purchase of Hutt section 19 (106 acres) and Harbour section 4 (104 acres), and surrender of Kaiwharawhara district government domain (100 acres)	310
	TOTAL	20,700

A point which the Tribunal does not make was that the area of the Wellington grant excluded the New Zealand company sections already surveyed at Porirua and the 'tenths' allocations made there by Halswell in 1842. These allocations, if they can be called that – as they had no formal status – were however to disappear with the Porirua deed.

The Waitangi Tribunal has investigated the extension of the Wellington grant by Grey thoroughly and there is probably no need for this matter to be reconsidered afresh from primary sources for this report. The Tribunal has concluded that once the surveyed sections and areas 'released' under the Deeds of Release in 1844 are subtracted (along with the

⁷²⁰ See *Te Whanganui a Tara*, maps facing pp 254 and 262 especially. Note, however, that these maps do not make it clear that there were also New Zealand company surveyed sections at Porirua and earlier 'tenths' allocations there as well, made initially by Halswell in 1842.

⁷²¹ See the above maps and map 1, in *ibid*, p 2.

allocated reserves tabulated above) the grant included an area of no less than 120,626 acres vested in the New Zealand Company – and, of course ultimately in the Crown – with no payment or compensation having been made to Maori *at any time*. In the Waitangi Tribunal’s words:⁷²²

It is clear that Maori received no payment for this large remaining unsold area of 120,626 acres. As we have seen, the McCleverty deeds did no more than require Maori to give up Maori cultivations to the government ‘in exchange’ for land they already owned. That was the only land they surrendered. The McCleverty deeds are silent about the remaining 120, 626 acres of land, which Maori have never willingly surrendered and for which they were never paid. Such lands were neither ‘waste lands’ nor demesne lands of the Crown. Nor were they within the scope of the Loans Act 1847.

Significantly, the Tribunal has also already concluded that Ngati Toa must be taken to have interests in the 120,000 ‘remainder lands’ area. In coming to this conclusion the Tribunal reiterated its findings with regard to Ngati Toa’s role regarding the 1844 Deeds of Release. Specifically with regard to Ngati Toa the Tribunal has found.⁷²³

In the case of Ngati Toa, we have used the same touchstone in section 9.5.1 in concluding that, when in 1845 Te Rangihaeata finally acceded to the November 1844 ‘agreement’, he surrendered Ngati Toa’s ahi kaa rights to the lands allotted to the New Zealand Company under the schedule to the 1844 or later deeds of release, subject to the condition that land be reserved for Ngati Rangatahi in Heretaunga. But Ngati Toa retained their take raupatu over the remaining land in Heretaunga and elsewhere in the Port Nicholson block over which the other Maori in the Port Nicholson block also had take raupatu.

⁷²² Waitangi Tribunal, *Te Whanganui a Tara*, 254.
⁷²³ *Ibid*, 255.

8 Other pre-emption era land transactions and Ngati Toa

8.1 Introduction

This chapter will cover the various land transactions, other than the Porirua and Wairau deeds themselves, that Ngati Toa were involved in before the establishment of the Native Land Court in 1862. These additional purposes took place in both the North and the South Islands. In the South Island the key transactions were the so-called Te Waipounamu deeds of the early 1850s. By these transactions Ngati Toa's remaining South Island interests were purportedly extinguished by Crown purchase. Issues relating to this sequence of transactions were traversed in the Waitangi Tribunal's Te Tau Ihu Inquiry. For the purposes of this scoping report an abbreviated discussion of the Te Waipounamu deeds is included here, although some further consideration of the North Island context of this deed is necessary.

There were also a number of additional pre-emptive purchases in the Kapiti Coast-Horowhenua region during the 1850s, and it is these transactions which will receive the fullest coverage in this chapter. From research done so far, the principal issue with these transactions with regard to Ngati Toa appears to be the extent to which Ngati Toa were prepared to adopt a more conciliatory stance regarding their traditional interests in the Kapiti-Horowhenua region under missionary and official pressure. An example of this is the Rangitikei purchase (see section 6.3 below) and there may well be other examples.

8.2 Crown pre-emptive purchasing: an overview

The bulk of Ngati Toa's lands were lost by Crown pre-emptive purchase in the period from 1847-59, principally by means of the Wairau, Porirua, Te Waipounamu, Waikanae and Wainui deeds. Combined with the effect of the Wellington Crown grants of 1845 and 1848 on Ngati Toa the overall effect was nothing short of catastrophic.

The development of policy relating to pre-emptive Crown purchasing has already been traversed in chapter one of this report, which also referred to the discussion of this matter in the Waitangi Tribunal's *Te Tau Ihu* Report (2007). Essentially Crown purchasing practice, despite an ostensible recognition of Maori customary title to the whole country, remained influenced by Lockean theories and the concept of 'waste lands'. The 'purchases' were in fact acts of extinguishment in return for a sum of cash and the delineation of reserves. In fact many of these so-called 'purchases', in terms of the content, are not very different

from the Indian treaties that typified the North American frontier in the 18th and 19th centuries.⁷²⁴

Changes in reserves policy were also discussed earlier in this report. At the time of the Wairau purchase Grey was still prepared to make substantial reserves for Ngati Toa (circa 117,000 acres) because he recognised that the Maori economy was still largely dependent on fishing, hunting, and gathering of wild resources, “for which they require extensive runs”.⁷²⁵ But by the time of the 1853 Te Waipounamu purchase policy had changed.⁷²⁶ The Crown was no longer willing to allow Maori to have “extensive’ areas as reserves: instead they were to be penned into small areas which they cultivate. This may explain the startling contraction in the size of the Wairau reserves brought about by the Te Waipounamu purchase. From a reasonably generous allocation of 117,000 acres the reserve area was cut to about 1,000 acres – shared, moreover, by *three* iwi.

8.3 “In Satan’s Time”: Christianity and the modification of customary law

The missionaries were an important agent of social change in the 1830s and 1840s. Younger chiefs of Ngati Toa such as Tamihana Te Rauparaha and Matene Te Whiwhi were self-consciously 'Mihanere' - devout Anglicans. They were on close terms with the influential CMS missionary, Octavius Hadfield, who came to the region in 1839 and lived first with the Te Ati Awa at Kenakena (Waikanae) and then at Otaki with the Ngati Raukawa. The advent of the CMS mission in the area was described by Heni Te Whiwhi, Matene's son, in 1905:⁷²⁷

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 endeavoured 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).

⁷²⁴ As the writer has argued fully elsewhere: see R P Boast, “Recognising Multi-Textualism: Rethinking New Zealand’s Legal History”, 37 (2006) *Victoria University of Wellington Law Review*, 547.

⁷²⁵ Grey to Earl Grey, 7 April 1847, GBPP (IUP), NZ vol 6, 16-17.

⁷²⁶ *Te Tau Ihu*, 128.

⁷²⁷ 1905 AJHR G-5, p. 8.

The missionaries naturally had their own determined views on such matters as slavery, infanticide, 'Popery', and the independence of the Church, arising from their own Christian evangelism and the great political causes of 19th-century England. They were, for example, especially hostile to slavery (abolished in some, but not all, of the British empire by statute in 1833 after years of public campaigning). Under missionary pressure, Maori iwi in the 1830s began to release their slaves - although one does find occasional statements in the Native Land Court Minute Books that slaves were released before the coming of Christianity, usually as an outcome of the ever-changing political relationships between the tribes.⁷²⁸ But undoubtedly Christianity often led to the release of captives:⁷²⁹

In consequence of Christianity having recalled them they [Ngati Toa] returned the child to its parents, and he went back to his parents and his having been taken was never cast in his teeth that he had been a prisoner.

Missionaries convinced rangatira that the time before Christianity was the 'the time of Satan', one of the worst aspects of which was the keeping of slaves. Nopera Te Ngiha of Ngati Toa told the Land Court in 1868:⁷³⁰

In Satan's time there were slaves, of the three hapus, at Kapiti. Satan's time was up to Mr Williams. [I] can't tell about 'mana' in the time of Satan.

Not so often noticed, but quite apparent from evidence in the Minute Books, is the fact that the missionaries held quite decided views about land tenure, and Maori customary law regarding land ownership. Hostile to slavery, they strongly disliked the notion of 'slave tribes' and worked hard to persuade the chiefs to recognise, in accordance with Christian concepts, the legitimacy of claims to land by defeated tribes.

Not everyone was happy about this. Rangatira complained that under missionary influence some tribes became 'whakahi' (cheeky), questioning the accepted scheme of things. Parakaia Te Pouepa, who was the main claimant in the Himatangi case, told the Native Land Court in 1868:⁷³¹

⁷²⁸ See the evidence of Parakaia Te Pouepa of Ngati Raukawa, the main claimant in the Himatangi case, at 1868 1 C Otaki MB 231.

⁷²⁹ Evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1 C Otaki MB 165.

⁷³⁰ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 397.

⁷³¹ Evidence of Parakaia Te Pouepa (Ngati Raukawa), Himatangi case, (1868) 1C Otaki MB 203.

Ngati Raukawa were kind to Ngati Apa. If Whatanui had not saved them they would not have been spared. They were not 'whakahi' to Ngati Raukawa or they would not have been spared. Began to be 'whakahi' after the missionaries came - about 1842 - they began to be cheeky - hearing that ["Kahore he pouanga, he Rangatira"?]. Missionaries were here before 1840. Their preaching and the purchase of land from them by the Government about 1847 caused them to say the land was theirs.

Henare Te Herekau, also of Ngati Raukawa, said much the same.⁷³²

Though the Christianity and the notice of government has raised these people out of their degraded position, if they had shown themselves before my hands were tied by the Gospel, I should have killed them or sent them off to some other Island.

Missionary influence was critical in the decision of the younger chiefs of Ngati Raukawa and Ngati Toa to acquiesce in Ngati Apa selling the Rangitikei Block to the government: "the young men, such as myself, Hakaraia and Matene Te Whiwhi, wished to follow advice of missionary [sic] and take the boundary to Turakina, and, after, to Rangitikei".⁷³³ On that occasion Samuel Williams - who officiated at Rangiatea church, Otaki, from 1849-53 - had been asked by McLean to assist in obtaining Ngati Toa and Ngati Raukawa assent to the sale. According to Williams:⁷³⁴

I advised Te Rauparaha Te Rauparaha to show consideration to the conquered tribes living on the land and that they should consent to the sale of a portion of the country.

The main point that must be made is that acquiescence in land alienations by other iwi may not prove that the sellers had independent authority under Maori customary law, but rather that younger, 'Mihanere' chiefs had been persuaded that, in the new era of the Gospel, rigid insistence on Maori custom was no longer appropriate. That Ngati Raukawa in the end agreed that Ngati Apa could sell the Rangitikei to the government does not prove that the Raukawa chiefs conceded that Ngati Apa had a right to do so according to Maori law.

This question also touches on the Treaty of Waitangi itself. Ngati Toa, Ngati Raukawa and the other tribes were, of course, Treaty signatories. It seems that the tribes signed after hearing Hadfield's explanation that the mana of the Queen was to protect their

⁷³² Evidence of Henare Te Herekau, (Ngati Raukawa), Himatangi case, (1869) 1 C Otaki MB 207.

⁷³³ Evidence of Rawiri Te Whanui, Himatangi case, (1868) 1C Otaki MB 231-2.

⁷³⁴ Evidence of the Rev. Samuel Williams, Himatangi case, at (1868) 1C Otaki MB 227.

lands, which can only have meant, to a tribe such as Ngati Raukawa, the titles to land recognised by Maori custom. Henare Te Herekau said:⁷³⁵

I saw the signing of the Treaty of Waitangi. It was signed in 1840 at Rangioru. Archdeacon Williams told us the meaning of the Treaty. He explained that it meant that the mana of the Queen was to be over the land as a protection from other nations, and as a protection for their lands. Ngati Raukawa then only had the mana [208.] over Rangitikei and Manawatu.

8.4 McLean as Land Purchase Officer

In 1848 the young Donald McLean scored a major success when he sorted out complex problems relating to boundaries and reserves at Wanganui, and drew up a new deed executed at an elaborate ceremony executed in May.⁷³⁶ At this time McLean was still an ‘Inspector of Police’ – this was how he signed his correspondence at this time – but following this he became increasingly entrusted with the difficult and arduous task of conducting Native land purchases. In the late 1840s and early 1850s McLean was actively engaged in land purchase activities on both sides of Cook Strait, including the Rangitikei purchase from Ngati Apa in 1849, the Pakawau purchase (1852) and the Te Waipounamu deeds (1853-1856).

8.5 “Rauparaha was annoyed with McLean”: The Rangitikei purchase (1848)

In 1848 the young Donald McLean scored his first big success at Wanganui, sorting out complex problems relating to boundaries and reserves and drawing up a new Wanganui deed which was executed at an elaborate ceremony in May.⁷³⁷ Lieutenant-Governor Eyre and the Colonial Secretary were both delighted with this apparently skilful resolution of a particularly difficult problem,⁷³⁸ and McLean, who still at this time signed his official correspondence as a mere ‘Inspector of Police’ was then entrusted with the task of buying the land in the Rangitikei and Manawatu areas. The Rangitikei-Manawatu was bitterly contested, and it was in fact this area, rather than the lands around Wellington, which was to become the major Maori land headache for the future Wellington Provincial government. The principal issue was whether Ngati Apa had rights to sell, and, if so, to where; their assertions were resisted, mainly by Ngati Raukawa but also by Ngati Toa.

⁷³⁵ (1868) 1 C Otaki MB 207.

⁷³⁶ Luiten, *Whanganui ki Porirua*, 12-13.

⁷³⁷ Luiten, *Whanganui ki Porirua*, 12-13.

⁷³⁸ See Luiten, *op.cit.*, 13. In a memorandum sent to the Principal Secretary of the New Zealand Company on 31 July 1848 (NZC 3/8, 381, cited Luiten *op.cit.* 13) Eyre stated that “the whole arrangements appear to have been conducted by Mr McLean in so careful and satisfactory a manner and the Reserves have been so explicitly enumerated and so clearly marked out on the ground that it appears almost impossible that any future difficulties can occur in connection with them”.

McLean's initial instructions reflected the government's view that the less precision the better: "it is considered preferable thus to negotiate for the whole claims without attempting to define their exact inland extent".⁷³⁹ An important meeting discussing the block took place on 15-16 March 1849. According to one source, both Te Rauparaha and Te Rangihaeata were present at this meeting, which, if correct, indicates that these two Ngati Toa rangatira considered that they had interests to safeguard in lands many miles away from Porirua.⁷⁴⁰ McLean himself states that Te Rangihaeata was instrumental in calling the meetings at which the Rangitikei purchase was to be discussed, but that in the end neither he nor Te Rauparaha was able to attend. On instructions from Te Rauparaha his son Tamihana Te Rauparaha and the chiefs 'Martin' (Matene Te Whiwhi), Hakaraia and Taratoa, the Ngati Raukawa 'chief of Manawatu' were deputed to oppose on Ngati Toa's behalf Ngati Apa's right to sell land south of the Rangitikei.⁷⁴¹ This was, in the end, Ngati Raukawa's stance as well. Te Rangihaeata himself, however, had contested Ngati Apa's right to sell *any* land south of the Whangaehu, following an initial request from Ngati Raukawa for his assistance in blocking the sale. According to McLean:⁷⁴²

Rangihaeata who had been for some considerable time preparing large quantities of food for the Ngati Toas and other Natives who were invited by him to the meeting, was evidently calculating on their co-operation in opposing the right of the Ngati Apas to sell any land south of the Whangaehu river. This Chief had also been led to expect that the Ngati Raukawas of Otaki and Manawatu would unite with him in opposing the sale of land as several of the influential members of the above tribe solicited Rangi's influence in preventing the Ngati Apa sale and requested him and his followers to sign a document embodying their determination to retain possession of all their lands.

Te Rangihaeata was embarrassed to find that most of the Ngati Raukawa rangatira and even some within Ngati Toa itself were willing to allow Ngati Apa the right to sell the land between the Whangaehu and the Rangitikei.⁷⁴³ While the older generation of rangatira, Rauparaha and Rangihaeata especially, insisted on what they saw as a strict application of Maori custom and denied that Ngati Apa had any rights to sell, a younger generation of missionary-influenced chiefs were willing to be somewhat less uncompromising. The lines of

⁷³⁹ Richmond to McLean, 31 July 1848, NM 10/9, NA Wellington, cited Luiten, *Whanganui ki Porirua*, 13-14.

⁷⁴⁰ See Wilson, *Early Rangitikei*, 26-32. Buick (*Early Manawatu*, 170) states

⁷⁴¹ McLean to Col. Secretary, MS 32/3, ATL Wellington [document transcribed in Appendix]

⁷⁴² Ibid.

⁷⁴³ Ibid.

debate were explained by Rawiri Te Whanui (Ngati Raukawa) to the Native Land Court in 1868.⁷⁴⁴

Mr McLean spoke of his having been to Ngati Apa to hear about the sale of land from the other side of Rangitikei to Manawatu. Rauparaha was annoyed with McLean. "What - did you go to those slaves to talk about a sale?" - meaning Ngati Apa. He said they were people whom he had spared and they had no voice in such a matter. Ngati Raukawa agreed. After Mr McLean left [there were] runanga of Ngati Raukawa. At these meetings was fixed the boundary of the land not to be sold at Whangaehu. Opinion was divided. Some said at Whangaehu, some Turakina. Rauparaha said let it be at Whangaehu - he and other chiefs. The point was not decided. [There was] another meeting afterward and discussion about the boundary, Whangaehu and Turakina. The young men, such as myself, Hakaraia and Matene Te Whiwhi, wished to follow advice of missionary [sic] and take the boundary to Turakina, and, after, to Rangitikei. [It was] proposed to fix Rangitikei as the boundary of Ngati Apa's sale - old men still urged that [sic] - Matene and Hakaraia pressed their point and it was at last agreed to.

These interesting remarks make it clear that missionary advisers were influential in persuading the rangatira of the coalition tribes to abandon notions of 'slave' tribes and conquest, and to acquiesce in land-selling.

⁷⁴⁴ Evidence of Rawiri Te Whanui, Himatangi case, (1868) 1C Otaki MB 231-2. The same transaction was also described by Tamihana Te Rauparaha, in cross-examination, at *ibid*, 386-7:

Muaupoko have no mana this side of Manawatu except within their fences - at Horowhenua only - Te Rauparaha arranged this boundary - he arranged it in 1840 at the time of the Treaty - he and Ihakara. Tell the Court that he and Mr McLean had [386.] had arranged that boundary. That was at the time of the purchase of Awahou. It was then that I and Matene, Rawiri Puaha, Hukiki with Ihakara arranged that boundary. The 'mana' of Tamihana Te Rauparaha is from Manawatu to Kukutauaki on this side of Waikanae. My mana did not cross Manawatu. The reason was because the great chiefs of Ngati Raukawa and Ngati Toa had returned that land to Ngati Apa in open day. It was done at the time of the Rangitikei block. I was present at Te Awahou. It was then that Ngati Raukawa and Ngati Toa returned to Ngati Apa the land on the other side of Rangitikei and this side of Rangitikei up to Manawatu. [I] went to Te Awahou (pa) with Nepia, Hukuki, and other chiefs. Left Rauparaha at Otaki. Rauparaha and Rangihaeata were anti land-sellers at that time. The thought of Nepia and Hukiki and the chiefs at that time was to sell all the land to the government.

Rauparaha and Rangihaeata said: "I will hold the land." It was not Ngati Raukawa who held the 'mana' of the land holding, it was Rangihaeata. I, Matene, Ihakara and Hakaraia supported the anti land-selling party. [We] reached Awahou. [We] found Ngati Apa and Mr McLean, Commissioner. Spoke about keeping the land and giving [387.] Ngati Apa the other side for them to sell. I spoke, and said, "Keep this side". Hori Te [Arana?] said, "Will you let the 'mana' of this be with Ngati Apa and you?". The great chiefs said, "Yes!" Therefore, I know the mana of Ngati Apa chiefs is great over this land. All the land and 'mana' went back to Ngati Apa then. There was a little bit left for Ngati Raukawa - just their clearings and 'mahinga kai'. The whole land was given back to Ngati Apa and Rangitane and Pane [iri?]. No exception of cultivations was made. I heard the majority of the owners assenting. I said nothing. I heard Ngati Raukawa giving back the land. 100 of us, and that 100 assented. I was silent myself. I listened to Ngati Raukawa bidding farewell to their lands - consented by silence. Ngati Raukawa gave assent. They occupied afterwards as 'mokais' of Ngati Apa.

It probably makes best sense to see Te Rangihaeata's efforts on this occasion as arising out of his recognised leadership of the anti-government non-selling factions within all the tribes in the coalition rather than as the champion of a specifically Ngati Toa interest, although no doubt the two roles overlapped. As late as 1849 Te Rangihaeata was still a formidable figure, and many outside of Ngati Toa still looked to him for leadership.

At the meeting of May 1849, then, McLean obtained the assent of Ngati Raukawa and Ngati Toa that Ngati Apa could sell the land between the Whangaehu and the Rangitikei. There was also agreement that Ngati Apa would be entitled to interests in some restricted areas on the south side of the Rangitikei. According to Buick, Matene te Whiwhi (Ngati Toa/Ngati Raukawa) 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".⁷⁴⁵ As far as Ngati Raukawa and the moderates within Ngati Toa led by Rawiri Puaha were concerned, allowing Ngati Apa to sell the Rangitikei Block was a generous concession, not a recognition of a claim of right. According to Matene Te Whiwhi:⁷⁴⁶

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.

No doubt Ngati Apa today would not agree.⁷⁴⁷ It is significant, however, that McLean thought it essential to obtain Ngati Toa and Ngati Raukawa assent before proceeding with the Rangitikei/Turakina deed, which was then drawn up by McLean and signed by 200 people of Ngati Apa at Wanganui in May 1849. Te Rangihaeata was still far from happy, and tried up to the last minute to dissuade Ngati Apa from selling, to no avail.⁷⁴⁸ That left the southern section, the Rangitikei-Manawatu block, which was to be the subject of much dissension and litigation in the future.

⁷⁴⁵ Buick, *Old Manawatu*, 170.

⁷⁴⁶ Cited Buick, *Old Manawatu*, 171 [no source given].

⁷⁴⁷ Indeed they do not: see David Armstrong, "*A Sure and Certain Possession*": *The 1849 Rangitikei/Turakina Transaction and its Aftermath*, 2004. The argument made above, which reproduces that set out in my *Ngati Toa and the Wellington Region*, has been strongly challenged by Armstrong, who (somewhat to my surprise) has noted that "it is not for Pakeha historians and legal academics to judge what is proper tikanga" (ibid, 73). This seems a little uncalled-for. I meant to suggest only that tikanga can change under the influence of Christian teaching, not that there is some kind of distinction between "true" and "Christianised" tikanga. In any event Armstrong appears to overlook the evidence of direct interference by Williams in the sale process.

⁷⁴⁸ McLean to Principal Agent, NZ Co, Wellington, 12 April 1849, in NZ Co 3/10, NA Wellington (copy in Luiten, *Whanganui ki Porirua*, Document Bank, II, 377-80).

The deed is reproduced by Armstrong in his comprehensive study of the Rangitikei/Turakina transaction.⁷⁴⁹ The sale price was £2,500. There was an elaborate ceremony in Wanganui where the deed was signed and the money was paid over by McLean to the Ngati Apa. Te Rangihaeata was invited to attend, but he did not. The Ngati Apa vendors seem to have spent all the purchase money more or less immediately in Wanganui on horses, blankets, and so forth.⁷⁵⁰ The Crown had certainly managed to acquire a very fine piece of land for its £2,500, a “vast plain of level table land”, according one contemporary, where “fine groups of tall trees intermingle with palms, tree ferns, cabbage trees” and where “the surface of the soil is of a rich black vegetable earth from one to one and a half feet in depth”.⁷⁵¹ Armstrong has argued that “Ngati Apa...entirely failed to appreciate that this transaction had been conducted in terms other than their own”⁷⁵², and their expectations of a closer relationship with the Crown were never realised. Te Rangihaeata might have said that they had been warned.

8.6 “Not a question of money, but of chieftainship”: The Pakawau Deed

This is a South Island transaction. However it is significant as demonstrating Ngati Toa’s concerns with regard to Crown purchasing policy at this time. The Pakawau block is located in the top northwest corner of Te Wai Pounamu. The purchase was arranged by the Superintendent at Nelson (Richmond) and the interpreter at Nelson (Tinline). The main value of the block lay in its coal deposits. The coal seam, Richmond thought, was of “great extent”.⁷⁵³ Richmond conducted preliminary discussions with a local chief named Te Koihua, who lived locally at Pakawau, and who presumably was Ngati Rarua, but he may have belonged to the Kurahaupo tribes (W.A. Chambers, however, states that Te Koihua, or Te Kohua, was a “sole survivor of Te Rauparaha’s invasion of the 1820s”⁷⁵⁴). On 11 December

⁷⁴⁹ Armstrong, “*A Sure and Certain Possession*”, 127.

⁷⁵⁰ See Armstrong, *op.cit.*, 139.

⁷⁵¹ See the report by Francis Williamson (an employee of the New Zealand Company), on NZC 108/10, cited Armstrong, *op.cit.*, 139.

⁷⁵² See Armstrong, “*A Sure and Certain Possession*”, 142. According to Armstrong (*ibid*): It is also argued that for Ngati Apa the May 1849 transaction was far more than a mere conveyance of land. It was a vitally important agreement upon which the future of the iwi depended. It mapped out the future relationship between Ngati Apa and the Crown. As we have seen this was to be a long-term relationship based on reciprocity and mutual advantage. In this sense the Treaty of Waitangi was little more than a statement of intention, and it was this agreement which gave real shape and meaning to the relationship on a particularised local level. It should also be noted that in an oral culture it was the verbal agreement and discussion, not the written deed, which formed the key determinant of what was to transpire. McLean’s constant references to future or collateral advantages, ongoing mahinga rights, annuities, and a union of the races – expressed by Ngati Apa as a ‘marriage’ – all undoubtedly served to confirm that the 1849 agreement contained elements more usually found in a treaty.

⁷⁵³ Richmond to Colonial Secretary, 5 Jan 1852, NM 8/52/680 [DB 3130-33].

⁷⁵⁴ Chambers, *Samuel Ironside in New Zealand*, 203.

1852 a number of Ngati Toa chiefs, including Rawiri Puaha, Matene Te Whiwhi, Hohepa Tamaihengia and Ropata Hurumutu wrote to Grey to express “our great concern about being encircled by Ngati Rarua”.⁷⁵⁵ My view is that this letter arose out of Ngati Toa concerns about the Pakawau deed, but it must be admitted that the circumstances are a little murky in that I am not sure that Te Kohua actually was Ngati Rarua.

Another complexity is that some of the chiefs who Rawiri Puaha was to later insist were entitled to receive the money were Ngati Rarua (Pukekohatu). At any rate Rawiri certainly insisted on Ngati Toa’s rights to participate in the negotiations, and was advised by his old friend the Reverend Samuel Ironside, now a Methodist minister in Nelson. Ironside explained in a letter which must have been sent to Richmond that Rawiri had given him a list of names of people who were entitled to the money: “he has given the list of names...whom he wishes to have the money paid to, and they will take it and hand it over to Wiremu Te Kohua and his party”.⁷⁵⁶ Ironside explained that “it is not a question of money, but of chieftainship”.⁷⁵⁷ Rawiri gave the names of those who should receive the money as himself, Pukekohatu, Te Wirihana, Hemi Kepa Te Iti, Maka Tarapiko, Wiremu Katene and Tamati Marino. The contract was finalised by Richmond in May 1852. On May 26 he reported that that purchase had been completed “to the satisfaction of the Natives residing in the district as well as all others who we could learn had any interest in the land”.⁷⁵⁸ The deed was signed by a number of Ngati Toa chiefs including Hohepa Tamaihengia and Wiremu Te Kanae.

8.7 “The principal claim to these districts”: The Te Wai Pounamu deeds

A. The Ngati Toa Te Waipounamu Deed, 10 August 1853

This transaction is dealt with here only in an abbreviated form (it is dealt with in full in my report written for the Te Tau Ihu Inquiry.) It is a transaction of considerable importance for a number of reasons. Firstly and most obviously this deed extinguished Ngati Toa’s remaining interests in the Northern South Island (outside the Wairau deed, that is). The remaining area of primary importance to Ngati Toa was Te Hoiere (the Pelorus Sound region), but of course there were general interests across the region as a whole. Perhaps even more important, however, was the effect of this transaction on the Ngati Toa reserves within the former Wairau block. These were virtually obliterated. Given the other deed purchases that took place in the North Island by 1860 or so Ngati Toa had virtually nothing left – just the reserves

⁷⁵⁵ Biggs, “Two Letters”.

⁷⁵⁶ Ironside (to Richmond?), 13 May 1852, SSD 1/5/108.

⁷⁵⁷ Ibid.

⁷⁵⁸ Richmond to Col.Sec, 21 May 1852, NM 8/52/680, National Archives, Wellington (DB 3147-49).

in the Porirua Block, Kapiti Island, and the pitiful reserves left at the Wairau. The suddenness of the iwi's loss of land from 1847 to 1859 is breathtaking.

Grey and McLean both played an important roles in this transaction. The government wanted this area mainly in order to “throw open” lands for mining.⁷⁵⁹ Shortly before he left Wellington on his way to take up his new position Ngati Toa and representatives of some other tribes assembled to meet him and also to farewell him. According to McLean:⁷⁶⁰

In addition to the Ngati Toa chiefs, who are acknowledged by the Natives generally to have the principal claim to these districts, several other influential chiefs from the Ngati Rarua, Ngati Tama, Rangitane and Ngati Awa tribes were present, and took part with the Ngati Toa at several conferences heard with his Excellency Sir George Grey respecting the sale of the Country.

I believe it has been suggested that McLean was lying about the presence of other tribes at the discussions, which seems to be to be very difficult to accept – why would McLean lie about this? Such a suggestion is ridiculous and implausible. McLean was a skilled negotiator who had a good grasp of Maori politics who would have had a good knowledge of tribal relationships and politics in the Cook Strait region. I find it difficult to accept that he would tell lies in official correspondence. Such an assertion comes uncomfortably close to disbelieving a source for no better reason than it fails to fit with the preconceived interpretations of the present day

The Crown had already extorted the Wairau block from Ngati Toa in 1847. What was left to them, apart from the iwi's general raupatu interest, was the very substantial Wairau reserve and their lands in Te Hoiere (Pelorus Sound). Ngati Toa did not want to part with the latter. This, says McLean, was “a district they had great reluctance in ceding”.⁷⁶¹ In fact the Government had considerable difficulty in getting its way. Grey reported to Newcastle that the area was one that the tribes had till then “declined to sell”.⁷⁶² However “after considering the subject for two or three days” they then “gave way”, apparently – Grey claims – “from a desire to meet my views”. McLean also speaks of “repeated meetings and discussions”. Exactly how Grey and McLean managed to talk Ngati Toa into the alienation of the region,

⁷⁵⁹ See report of Domett to Richmond, 12th August 1853, NP 5/1, DB 3376-84.

⁷⁶⁰ See McLean's report of 11 August 1853, copy on MA 13/17, National Archives, Wellington. I believe it has been suggested that McLean was lying about the presence of other tribes, which seems to be to be very difficult to accept – why would McLean lie about this? My impression of McLean was that he was a skilled negotiator who had a good grasp of Maori politics, but I find it difficult to accept that he would tell lies in official correspondence. Such an assertion comes uncomfortably close to disbelieving a source for no better reason than it fails to fit with a preconceived interpretation.

⁷⁶¹ McLean, *ibid*.

⁷⁶² Grey to Newcastle, 13 August 1853, CO 209/117, DB 1349-57.

which they certainly were reluctant to part with, is not at all clear. As an inducement Grey offered the Ngati Toa chiefs an unusual item of compensation: fifteen of the principal chiefs were to be awarded scrip worth £50 which they could use to select freehold grants from Crown lands anywhere in the Colony. In addition Grey agreed, as McLean put it, that 26 of the “Native Claimants were also to have Two hundred acres each, out of the lands thus ceded...in such places at the Governor might set apart for this purpose”. The final details of the deed were left to McLean.

The Te Kanae manuscript, however, contains an account of this transaction which is somewhat different from official sources. According to this text, in 1852 “the wife of Ropata Hurumutu sinned with a certain man of Te Hoiere”. Ropata was “grieved” and “announced that that land at Te Hoiere should be sold.” The chiefs of Ngati Toa agreed, and “L2000 was accepted from the Commissioner, Makarini (McLean) in that year 1852”. Then:

Te Wahapiro bethought him of the land where died Te Puoho, at Tutura. He considered that owing to the desire of Sir George Grey when he asked for Wairau for payment for his dead. So he spoke in the presence of Ngati-Toa and the chiefs approved of that sale and the boundaries of the land sold. Tutura was the boundary to the South, Kahurangi the boundary on the East beyond Whanganui. The money agreed upon for that area was L5000.

This source seems to indicate, however, that there was a further round of negotiations in 1853.

In 1853 the eastern part of the Island of Waipounamu was settled for with the Queen, by the hand of McLean and the chiefs of Ngati-Toa-Rangatira. The total sum of money agreed upon by Commissioner McLean was L7000. The money paid out to Ngati Toa was L3000. The money paid out to Ngati Rarua was L1000. L3000 was unaccounted for owing to the adept doings of Te Makarini.

This appears to suggest that Ngati Toa were under the impression that they were to be paid £7000 in total, £2000 for Te Hoiere, and £5000 for the balance of their interests. Of this sum, they actually received £3000, and Ngati Rarua – there is no suggestion here that the latter were not entitled to it – which left £3000 unaccounted for. McLean then used the money to buy out the interests of others:

In 1853 McLean bought some areas at Whakatu. That money L3000 was spent in connection with those areas, being money which had been duly arranged for those other lands in respect of which the boundaries and the price had been determined. Such were the methods of the servants of the Government as carried out in New Zealand.

The Ngati Toa Te Waipounamu deed was the first of a sequence. After McLean had paid out the purchase price of £5000 to Ngati Toa and to non-resident Te Atiawa who had returned to Taranaki, he made a number of other payments to other iwi of the region. An additional £2000 was paid out to the other groups, Te Atiawa, Ngati Rarua, Ngati Tama, Ngati Koata, Rangitane, and Ngati Kuia. Ngati Apa got nothing.⁷⁶³ Apart from areas at Rangitoto, Wakapuaka and Rangitoto, and from the reserves at the Wairau, Nelson, Motueka and other places, the entire northern South Island was regarded as Crown land.

B. *The Te Waipounamu Deed Reserves*

A vitally important question is why the very substantial reserves made in the 1847 Wairau deed were more or less obliterated by the later Waipounamu deeds, in which the provision for reserves appears to be grossly inadequate. Or rather, *no* provision was made for reserves; this was left for the surveyors to mark out on the ground. The deed states merely:⁷⁶⁴

Now, certain places are agreed to by the Queen of England to be reserved for our relations, residing on the said land, which has been sold by us, but the Governor of New Zealand reserves to himself the right of deciding on the extent and position of the lands to be so reserved, and certain other portions of land have also been agreed upon by the Governor of New Zealand to be granted to some of our chiefs.

There was a general reservation of cultivations and areas required for subsistence, and that Rangitoto (D'Urville) was wholly excluded from the purchase. According to McLean:⁷⁶⁵

These reservations consisted of the cultivations and lands required for the subsistence of the Natives resident in the District, it being always distinctly understood that Rangitoto or D'Urville Island was excepted from the sale.

There is a memorandum in the printed correspondence in Mackay's *Compendium* from McLean which gives some indication of the reserves to be made in the Wairau area:⁷⁶⁶

The fishing reserves for the Natives of the Wairau District is bounded to the North by Te Akiroa on to the range above the bay, and descends to a red cliff called Te Karaka where there is a small stream of water. The boundary is to run back so as to include some land behind this reserve until it reaches the Pukaka stream, where they desire to fish eels and plant potatoes. Te Kana Pukekohatu and Wiremu Nera [sic] Te Kanae are to have 50 acres each at Wairau.

⁷⁶³ See Waitangi Tribunal, *Te Tau Ihu*, 213.

⁷⁶⁴ Using English translation in Mackay, *Compendium*, vol 1, 308.

⁷⁶⁵ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85.

⁷⁶⁶ Memorandum of instructions from Donald McLean, 24 April 1856, in Mackay, *Compendium*, vol 1, 306

Pukekohatu's land has been laid off by Mr Budge, who was instructed also to lay off Te Kanae's.

As well as the two 50-acre sections for Te Kana Pukekohatu and Wiremu Neera te Kanae a further 2939 acres were ultimately reserved in the Wairau district.⁷⁶⁷ There were a number of reservations or exclusions from the 1853 deed (all of which have to be identified from subsequent correspondence). These were (a) Rangitoto in its entirety; (b) "cultivations and lands required for the subsistence of the Natives" (under which heading the fishing and other reserves at the Wairau were later surveyed off); (c) scrip awards for 15 named individuals of Ngati Toa; (d) 200-acre awards to 26 named individuals of Ngati Toa to be selected "out of the land thus ceded by them"

Difficulties had quickly become apparent when Brunner and Jenkins began surveying out the reserves within the Te Waipounamu block in November 1854 (i.e before the remaining Waipounamu deeds were drawn up). The survey team had been given a scale of some kind to assist in the allocation of the reserves, the details of which are not clear. It was however based on population numbers, so must have been on the basis of an allocation of a fixed number of acres per head. The survey encountered a great deal of local opposition, so much so (as McLean puts it) that "they were unable (except in a few instances) to effect any permanent adjustment of the reserves and boundaries".⁷⁶⁸ Brunner had found that he was able to survey off the reserves in Pelorus Sound without much difficulty, but it was a different matter at the Wairau.⁷⁶⁹ He learned from his colleague Jenkins that "Rawiri", (Rawiri Puaha, presumably) had told the locals not to part with their land in any circumstances. The fact that the survey could not be completed seems to have convinced McLean that separate transactions would have to be made with the people in residence in the Upper South Island. But this was not the only problem. One of the outcomes of the Te Waipounamu transactions was to dramatically contract the areas of reserve at the Wairau; and there was now some significant opposition to that once the implications had become clear.

Subsequently there was some kind of resolution of the survey issue at the Wairau. Rawiri Puaha had by this time apparently been persuaded by McLean to allow the survey of the Wairau reserves to proceed, but this had not quite resolved the matter. Rawiri Puaha had had some reservations about the implications of the Te Waipounamu deed at the Wairau, but evidently by this time he had been persuaded to change his mind. It is unclear why, however.

⁷⁶⁷ A Mackay to Under-Secretary, Native Department, 1 October 1873, MA 13/17, National Archives, Wellington.

⁷⁶⁸ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85, at 1565.

⁷⁶⁹ Thomas Brunner to Commissioner of Crown Lands, Nelson, 11 January 1855, enclosure in Gore-Browne to Labouchere, CO 209/135, DB 1586-95.

As his behaviour over the original Wairau deed indicates, Rawiri was susceptible to arguments that it was important to eliminate sources of antagonism between Maori and Pakeha; and there certainly had been friction between incoming Pakeha runholders and Maori people in the Wairau area. Possibly McLean had emphasised this. Grey had also earlier held Rawiri Puaha, Tamihana Te Rauparaha and Matene Te Whiwhi personally responsible for the 1847 deed and had threatened that if Maori continued to trespass on to settler land the government would cease making payments, which may have impressed on the chiefs the importance of clarifying the boundaries, even if this meant having to settle for a smaller area.

Rawiri's change of mind did not however end local Ngati Toa opposition. Wiremu Te Kanae of Ngati Toa had then again sent the surveyors away. Exactly when that occurred is unclear, but presumably this happened in late 1854 or early 1855. By February 1855, however, Wiremu Te Kanae had agreed that Brunner and Jenkins could now return to complete the survey:⁷⁷⁰ In January 1856 McLean returned to the South Island and went to Cloudy Bay accompanied by the leading chiefs of Ngati Toa, including Rawiri Puaha, Hohepa Tamaihengia, Matene Te Whiwhi and Tamihana Te Rauparaha.⁷⁷¹ McLean described in his report the reserves surveyed off at the Wairau by the official survey party in December 1855-January 1856.

At this stage the Wairau Reserves comprised:

- a. An estimated 770 acres⁷⁷² on the left (i.e. north) bank of the river;
- b. an area of about 200 acres at White's Bay;
- c. 50 acres belonging to Ngati Toa chief Wiremu Nera Te Kanae;
- d. 50 acres belonging to Te Kana Pukekohatu.

The Te Waipounamu deeds were intended by Grey and McLean to extinguish such native title as still existed in the northern South Island. Henceforth Maori were to be confined to their reserves, and thus the main question which has to be addressed is the adequacy of the reserves that were set aside. The Waipounamu deeds did not only extinguish native title over previously unceded areas but also had a dramatic impact on existing reserves. This is especially true at the Wairau, where the reserves were contracted from a substantial area

⁷⁷⁰ Wiremu Te Kanae to Richmond, 24 Feb 1855, MA 13/51, WNA.

⁷⁷¹ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85, at 1572.

⁷⁷² Or 670 (the figures words and numbers in the original differ). But both figures were only estimates. These reserves were not surveyed until circa 1892 and the reserved area turned out to be somewhat larger; the interests of the individual grantees were then adjusted pro rata.

which may have been over more than 100,000 acres down to barely 1,000 acres: a 99% reduction, or possibly more (supposing Mackay's calculations to be correct). It is not very clear why this was agreed to, or even if it was. Rawiri Puaha seems to have had his doubts, but in the end agreed to the smaller reserve boundaries. Wiremu Te Kanae had also had his doubts as well, and had refused to allow the survey to proceed, but then following a letter from McLean and Rawiri Puaha decided to drop his opposition. Perhaps this was in order to preserve good relations with the settlers, perhaps it was due to declining populations, or perhaps it is to be explained by the scrip awards and other inducements.

It should be added that no effort was made to provide any kind of endowment reserves in this area, akin to the Wellington or Nelson Tenth.

The 200-acre awards to 26 Ngati Toa individuals did (at least in theory) set aside a further 5200 acres in the South Island for Ngati Toa. Whether the compensation that was paid represented any kind of fair consideration for the huge contraction of the reserve areas at the Wairau may be doubted all the same. The mixed Ngati Toa-Rangitane-Ngati Rarua community at the Wairau now found itself confined to about 1000 acres of land. It is this area which forms the origin of such Maori freehold land as now exists in the Wairau area. This is a very small area and cannot have served as a sufficient land base for such Maori as still lived in the region. As well as being small the reserved land at the Wairau was of mediocre quality. In 1889 Judge Mackay conducted an investigation of the reserve area and divided it between Ngati Toa, Rangitane and Ngati Rarua on the basis of residence. The larger part of the reserve went to Ngati Rarua (315 acres), the next to Rangitane (270 acres) and the smallest portion to Ngati Toa (183 acres). In his directions to the surveyors Judge Mackay noted "the uneven character of the soil which renders a large portion of the Reserve unsuitable for cultivation".⁷⁷³ The land at the Wairau was also very susceptible to flooding. There were particularly severe floods in 1923 and 1939.

8.8 The Waikanae Block (20 April 1858)

In 1852 Grey had tried to persuade Te Rangihaeata to sell Waikanae to the government, but Te Rangihaeata was far from willing; he "flatly and rudely refused" and said that "you have had Porirua, Ahuriri, Wairarapa, Wanganui, and the whole of the Middle Island given up to you and still you are not contented. We are driven into a corner."⁷⁷⁴ By this time the Te Ati Awa community of Kenakena at Waikanae had been abandoned for some years, Te Ati Awa having mostly returned to Taranaki in 1848. A few Te Ati Awa stayed on in the area,

⁷⁷³ Mackay, memo of 5 July 1892, MA W 2218 Box 21 [Miscellaneous South Island Papers], Wairau Court Correspondence, National Archives, Wellington (not in Document Bank).

⁷⁷⁴ Richard Taylor, *Te Ika a Maui*, London, 1855, 339.

however, most notably Metapare Waipunahau, the widow of a whaler, and her two sons Hemi Matenga and Wi Parata - both of whom are also regarded as Ngati Toa.⁷⁷⁵ Charlotte Godley passed through Waikanae in 1850 and found it deserted (the 'most desert-looking place that perhaps ever was seen'⁷⁷⁶). Four years later Richard Taylor went to look for the large decorated church built under Octavius Hadfield's supervision by Ngati Toa and Te Ati Awa in 1843 and found it empty and in ruins: a 'most melancholy' scene Taylor thought.⁷⁷⁷

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.

It should be noted, however, that 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.⁷⁷⁸ Certainly some Ngati Awa people were living on the land at the time it was purchased by the government in 1858.

The 1858 Waikanae Block purchase, and the purchase of the nearby 1859 Wainui block, were part of a large scale programme of land purchasing carried out by the Native Land Purchase Department, headed by McLean, in the lower part of the North Island. Some of these purchases were on the West Coast, others in the Wairarapa. The full context of this round of Crown purchasing was addressed in the Waitangi Tribunal's Wairarapa Inquiry (in which Ngati Toa chose to not take part), which I understand is soon to be reported on. McLean's agent on the spot was William N. Searancke. (Searancke at this time is said to have been "notorious for making secret deals and breaking promises"⁷⁷⁹). He also made particular

⁷⁷⁵ C. and J. Maclean, *Waikanae past and present*, Whitcombe Press, Waikanae, 1988, 22.

⁷⁷⁶ Charlotte Godley, *Letters from early New Zealand*, Whitcombe & Tombs, Christchurch, 1951, p. 106.

⁷⁷⁷ Taylor, Journal, 4 April 1856, Vol. 8, ATL, p. 174.

⁷⁷⁸ 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.

⁷⁷⁹ Sally Maclean, "Searancke, William Nicholas, 1817?-1904: Surveyor, land purchase commissioner, resident magistrate, land agent", *DNZB*, II, 446-7, at 446. Searancke was a former New Zealand Company surveyor who arrived in the colony in 1842. He seems to have had a number of liaisons with Maori women and was of course Te Puea Herangi's grandfather. He spent most of his life

efforts to connect up the West Coast blocks he was purchasing with blocks on the Wairarapa side being bought from Ngati Kahungunu at the same time. In 1859, for example, reporting to McLean on the Wainui purchase from Ngati Toa, Searancke stated that “a small portion only of this land is at present available, the back country being unknown and unexplored”.⁷⁸⁰

I propose, subject to your approval on the the completion of of the purchase of the Waikanae township block of land, to carry the survey from the West coast to Wairarapa, in order that the surveys of the East and West coasts may be properly connected.

The Waikanae block, described in 1858 by W H Searancke as “a large broken hilly country lying between the coast and and the Wairarapa district”⁷⁸¹, was sold to the Crown on 20 April 1858 and was a joint transaction in which Ngati Toa and Te Ati Awa were co-vendors.⁷⁸² Searancke reported also that this “very large block” extended “from the West Coast to the Tarara [Tararua Range], the boundary of the land sold by the Ngatikahungunu Tribe to the Crown”.⁷⁸³ At first Searancke thought the block covered 60,000 acres, but this was later revised upwards to 90,000.⁷⁸⁴

The deed states that a cash advance of £140 was to be paid immediately; “when this land is surveyed the final payment to us will be decided upon.” The deed was drawn up by W.N. Searancke and was signed on behalf of the vendors by Matene Te Whiwhi, Nopera, Hori Tumu, Mohi Tiaho, Poihipi Te Ono, Tiaho, Hemi Wakata, Tamati, Rawiri Puaha, Heruwini Te Tupo, Ropata, and Teira. The boundaries of the block commenced “at Poawa thence direct to Pawakataka thence towards the North along the boundary of the land sold by Ngatikahungunu thence along the boundary of Heruiwini te Tupe’s land to the sea at Waikanae thence in a southerly direction to Poawa”. The deed contains the following note:

in the Waikato, was a supporter of McLean, and died at Hamilton in 1904. Maclean sums up (ibid, 447): “At his best astute and personable, at his worst devious and unfeeling, Serancke exploited every opportunity to further his career in the administration of land and justice”.

⁷⁸⁰ Searancke to McLean, 6 July 1859, 1861 AJHR C-1, 285.

⁷⁸¹ Searancke to McLean, 31 May 1858, 1861 AJHR C-1, 99.

⁷⁸² *Turton's Land Deeds of the North Island*, Volume II, Wellington Deed No 23. p 128-9. The deed states clearly that this is a joint Ngati Awa and Ngati Toa sale:

Tenei Pukapuka tuku whenua I tuhituhia nei i tenei ra I te rua tekau o Apriera (20th of April) 1858 he pukapuka tino whakaae pono na matou na nga rangatira me nga tangata o Ngatitoo o Ngatiawa kia tino tukua rawatia tetahi wahi o to matou nei kainga ki a Wikitoria te Kuini o Ingarangi, ki nga Kingi, Kuini ranei o muri iho i a ia a ake tonu atu. (English text: “This Deed of sale of land written on this twentieth (20th) day of April 1858 is a document of the full and true consent of us the Chiefs and people of Ngatitoo and Ngatiawa to fully cede a portion of our place to Victoria the Queen of England and to the Kings or Queens who may succeed Her for ever.)

⁷⁸³ Searancke to McLean, 5 July 1858, 1861 AJHR C1, 274-6, at 275.

⁷⁸⁴ Servantes to McLean, 6 August 1858, 1861 AJHR C1, 279.

Produced before the Native Land Court at Waikanae this 22nd day of May 1873 by Mr Wardell as Crown Agent at the investigation of the claims of Eruini Te Tupe⁷⁸⁵ to a block called Muaupoko within the Ngarara Block.

That there was some opposition to this purchase is shown by the following letter from McLean (Chief Land Purchase Commissioner) to Searancke:⁷⁸⁶

Referring to your letter of the 24th ultimo, respecting the purchase of land at Waikanae, and the arrangements proposed by you for a settlement of the Native claims after you had overcome considerable opposition to the sale on the part of some of the Natives, and stating that you had made certain proposals in reference to reserves required by them, subject to His Excellency's approval, with respect to those reserves I have the honor to acquaint you that the Governor has no legal power to issue Crown grants in the manner proposed by you. The object, however, in this case can be indirectly attained through "The New Zealand Native Reserves Act, 1856" if the Natives will agree to hand over the reserves to the Commissioners for the Province of Wellington, appointed under the aforesaid Act for this purpose. The price proposed by you for the land is satisfactory.

8.9 Wainui Block Transaction (9 June 1859)⁷⁸⁷

This is also a very important transaction, probably, apart from the Porirua purchase itself, the most important North Island pre-emptive deed purchase in which Ngati Toa participated. The agreement was also negotiated on behalf of the government by William Searancke. The land alienated was a substantial area running along the coast from a point south of Paekakariki to Whareroa and then running inland to the Tararua divide and was presumably the remaining area lying between the Porirua and Waikanae blocks. Although the Waikanae transaction was a joint Ngati Awa-Ngati Toa sale, the Wainui transaction involved Ngati Toa only.

On 6 July 1859 Searancke reported back to McLean that this purchase had been completed.⁷⁸⁸

The Wainui block, about 30,000 acres, is a portion of the Waikanae District on the West Coast, having a frontage to the Westward of five and a-half miles, ins principally heavily timbered land and apparently hilly, and about three thousand acres of open fern and marshy land, is valuable from its proximity to Wellington, and being on the road from Wellington to

⁷⁸⁵ Presumably the same person as the deed signatory 'Heruwini Te Tupe'.

⁷⁸⁶ McLean to Searancke, 22 August 1858, in *Official Documents Relating to Native Reserves* (in Turton?) (copy in file PRIMARY SOURCES: MISC). This is in response to Searancke's report of August 6 1858 (1861 AJHR C1, 279), where Searancke reports on the purchase, its price, and his suggestions relating to reserves.

⁷⁸⁷ *Turton's Land Deeds of the North Island*, Volume II, Wellington Deed No 23a, pp 129-131.

⁷⁸⁸ Searancke to McLean, 6 July 1859, 1861 AJHR C1, 285-6.

Wanganui. The Reserves appear to be large; but when the number of Natives resident within the boundaries is taken into consideration they could not in justice be made smaller. There are also two pieces of land (tracings of which are forwarded) within the boundaries, conveyed by Deeds of gift to the half-caste children of John Nicol,⁷⁸⁹ and his wife Peti; and to Henry Flugent and his Native wife, in consideration of a residence of 28 years among them. I beg to recommend that Crown Grants should be given in these two cases.

The preamble to the deed is a standard consent to permanently alienate:⁷⁹⁰

Tenei Pukapuka taku whenua e tuhituhia nei i tenei ra i te iwa o nga ra o Hune (9th) i te tau o to tatou Ariki. Kotahi mano e waru rau e rima tekau ma iwa 1859. He Pukapuka tino wakaee pono na matou na nga Rangatira me nga tangata o Ngatitoo e mau nei nga ingoa ki tenei pukapuka mo matou mo a matou whanaunga me o matou uri katoa e whanau i muri iho i a matou kia tino tukua rawatia tetahi wahi o to matou kainga ki a Wikitoria te Kuini o Ingarangi ki nga Kingi Kuini ranei o muri iho i a ia ake tonu atu.

This Deed of sale of land written on this 9th day of June...1859 is a deed of the true consent of us the chiefs and people of Ngatitoo whose names are hereunder written on behalf of ourselves our relatives and all our descendants who may be born after us to finally cede a portion of our place to Victoria the Queen of England and to the Kings or Queens who may succeed her for ever.

The consideration for the purchase was £850, part of which had been paid in advance (£50 paid in the preceding year on the the 20th April 1858 and the remaining £800 on the date of execution of the deed). The northern boundary of the block sold is 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”).⁷⁹¹ The eastern boundary of the block ran down the divide presumably as fixed by the earlier Ngati Kahungunu deed, although the language used is none too clear (“thence

⁷⁸⁹ This is presumably “Scotch Jock” Nicholls.

⁷⁹⁰ *Turton’s Land Deeds of the North Island*, II, 129.

⁷⁹¹ 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.

toward the south along the mountain to Pawakatakataka”). Pawakatakataka (or “Pawakataka” was apparently a well-known landmark, and marked the inland northern boundary point of the Porirua deed of 1847.⁷⁹² From here the boundary ran “in a North Westerly direction to Pouawa thence across the Queen’s high road to Tunupo thence to the beach at Te Ana-a-Hau”. The boundary then ran back along the coast to the Whareroa stream outlet (“thence Northerly along the beach to Paekakariki Wainui where it ends”).

The southern boundary of the Wainui block is confusing as it appears to run to the south of the northern boundary of the Porirua block. The northernmost coastal boundary point of the latter was described as “Wainui” which is identified on the sketch plan of the Wainui block reprinted in *Turton* as within the Wainui block boundary – in fact, towards its northern end. Perhaps the boundaries in the Porirua deed were simply regarded as too vague and it was safer to allow for a certain amount of overlap between the two.

Within the boundaries of the Wainui block six small reserve areas (“the pieces of land for us in these boundaries”/ “Ko nga wahi whenua ma matou i roto i nga rohe koia enei”) were set aside for Ngati Toa. These were:

- “our settlements at Whareroa 17 acres” (“ko o matou kainga kei Whareroa 17 eka”);
- “at Wainui 135 acres” (“kei Wainui 135 eka”);
- “at Paekakariki 135 acres” (“kei Paekakariki 135 eka”);
- “there is one place at Ngapaipurua from thence along the swamp till it strikes the Northern boundary, 280 acres” (“ko tetahi wahi ki Ngapaipurua haere noa i te taha repo tae noa ki te rohe i te taha raro 280 eka”);
- “one portion at Te Rongo-o-te-wera 160 acres” (“Tetahi wahi ki te Rongo o te Wera 160 eka”);
- “one portion at Te Puka inland of Wainui 60 acres” (“Tetahi wahi ko Te Puka ki uta mai o Wainui 60 eka”).

In addition to these reserves, there were two allocations to particular individuals, these being:

⁷⁹² Recall the boundary of the Porirua block transaction, *ibid*, 127: “[t]hese 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, the the boundary takes a straight course inland to Pouawa, *running quite as far as Pawakataka*” (emphasis added).

- “the land at Paekakariki 6½ acres given to Peti and her half caste children” (“Kei te wakaae hoki matou ki te wahi whenua ki Paekakariki 6½ eka kua tukua atu ki a Peti ratou ko ana Tamariki hawekaihe”);
- “and a piece of land at Paekakariki a free gift to our old friend Henry Flugent” (2½ acres).

These parcels for Peti and Henry Flugent were to be surveyed out by the government. The deed was signed by Te Waka Toa, Reweti Te Horomamaku, Hemi Wareti, and 95 other people, presumably all of them Ngati Toa, including Matene Te Whiwhi, Tamihana Te Rauparaha and Wiremu Te Kanae.

8.10 Papakowhai Block⁷⁹³

On the 28 May 1862 a small block of land was bought from Ngati Toa by the Wellington Provincial government, the negotiations being conducted by I.E. Featherston as Land Purchase Commission. This block was bounded by the Kenepuru stream in the Porirua Valley, and was sold for £210. The deed was signed by Featherston on behalf of the Provincial Government and by 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 on behalf of Ngati Toa.

8.11 Mana Island Purchase (1 December 1865)⁷⁹⁴

A. *Matene Te Whiwhi and Tamihana Te Rauparaha's petition*

Mana Island was an important place for Ngati Toa, and was where Te Rangiahaeata had his famous house, *Kai Tangata*. The island also contained the painted and decorated tomb of Te Tohi, well known as a very tapu place. There is a reasonably detailed description of Mana in G F Angas' *Savage Life and Scenes* (1847) which describes the island as it was around 1843, not long after the battle of the Wairau, which is an interesting and full account written by a reasonably unprejudiced observer.⁷⁹⁵

With some difficulty I obtained a canoe from Ranghaeata's wife, who pretended they were all “tapu”; and, with three of the slaves belonging to the pah, I crossed to the island of Mana, or Table Island, which is about five miles from the shore. It was a dangerous passage; for, on

⁷⁹³ 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.

⁷⁹⁴ *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.

⁷⁹⁵ G F Angas, *Savage Life and Scenes in Australia and New Zealand*, Smith, Elder and Co., London, 1847, vol 1 pp 264-268.

getting out in the open straights, from beneath the lee of the high land to the eastward, we were nearly swamped in the trough of the sea: the canoe rocking from side to side, and taking in water faster than we could bale it out. Drenched with salt water and spray, we landed at a small pah, now nearly deserted, consisting of not more than a dozen houses. Here, however, still remained two of the most perfect and elaborately ornamented native buildings in this portion of the straits, - the celebrated house, belonging to Rangihaeata, called *Kai tangata*, or "Eat man;" and the mausoleum of E Tohi, the sister of Rauparaha. *Kai tangata*, or "Eat man" house, is a wooden edifice in the primitive Maori style, or large dimensions, with the door-posts and the boards forming the portico curiously and elaborately carved in grotesque shapes, representing human figures, frequently in the most indecent attitudes: the eyes are inlaid with *pawa* shell, and the tattooing of the faces is carefully cut. The tongues of all these figures are monstrously large, and protrude out of the mouth, as a mark of defiance towards their enemies who may approach the house. The whole of the carved work, as well as the wooden parts of the building, are coloured red with *kokowai*, an ochre, found principally on the sides of the volcano of Taranaki. The portico or verandah of Rangihaeata's house is about twelve feet deep, and the ridge-pole and frame-boards of the roof are richly painted in spiral arabesques of black and red; the margin of each spiral being dotted with white spots, which adds richness to the effect. The spaces between the wood-work are filled up with variegated reeds, beautifully arranged with great skill, and fastened together with strips of flax dyed red, and tied crosswise, so as to present the appearance of ornamental basket-work. Above the centre of the gable-roofed portico is fixed a large wooden head, elaborately tattooed, with hair and a beard fastened on, composed of dogs' tails. Within the house is a carved image, of most hideous aspect, that supports the ridge-pole of the roof: this is intended to represent the war-like proprietor, and is said by the natives to be entirely the work of Rangihaeata's own hand. Many of the chiefs, as well as the *tohungas*, or priests of New Zealand, excel in carving and tattooing; and it is not infrequent to find, at the head of their canoes, richly executed figures and ornaments, which have been designed by the chiefs to whom they belong.

Angas next describes Te Tohi's decorated tomb:

The tomb or mausoleum of E Tohi is erected near to the "Kai tangata". It consists of a semi-circular erection of wood, within which the body was placed in an upright position. The roof is square, and projects like a verandah all round, sloping towards the back; it is supported by posts at the corners, and, like the central coffin or box, is richly ornamented with spiral arabesques. The ornamental work on the coffin is entirely red and white, whilst the other portions, together with the double row of palings that surrounds it, are coloured black and red. In front of the projecting roof is suspended a richly embroidered *kaitaka* mat; and tufts of the feathers of the albatross are arranged, at intervals, along the frame-work. This spot, and the ground for a certain distance surrounding it, are strictly *tapu*; and it would be more than his life were worth for a slave, or an inferior native, to infringe upon its sanctity. Like all the Maori works of art, these erections are entirely composed of wood, and other perishable

materials; and owing to the humid climate, and the custom of never repairing these sacred edifices, they soon rot, and fall to pieces.

Angas lamented how few such works “of so much labour and ingenuity” were now being built. Daily he had explored “ruined and *tapued* paha, frequently by stealth, searching for these primitive works of an extraordinary and ingenious people”, who “themselves ere long may pass away, and become, like their houses, matters of history”. This seems to be a reference to the population decline of the Maori people at this time and the consequent abandonment of many villages.

At Mana Angas met Te Rangihaeata’s daughter:

At the island of Mana we found Rangihaeata’s only daughter, who is married to a whaler residing there. She is a tall, masculine-looking woman, about twenty-five years of age, with a profusion of black hair, which she ties in a knot at the crown of her head; she was dressed in the European fashion, in a blue cotton print, but retained the *mako*, or shark’s teeth, in her ears, and wore suspended around her neck the *tiki*, or household god of green jade, which passes as an heir-loom amongst families.

It might be thought from an examination of *Turton’s Deeds*, that Mana Island was alienated by Ngati Toa to the Crown in 1865 (that being the date of the Mana Island deed), but this is deceptive: the history of the alienation of Mana Island is much more complicated than might appear at first sight. There is very little documentation regarding the alienation of Mana Island to the Crown, but the little there is does throw a considerable amount of light on the circumstances of the alienation of the island to the government. On 4 September 181 F D Bell, presumably in his capacity as Land Claims Commissioner (Bell had been given the responsibility of dealing with the remaining Old Land Claims) sent a memorandum to the Native Minister on the subject of Mana Island.⁷⁹⁶ The full text of the letter is as follows:

The enclosed letter from Matene Te Whiwhi of Otaki refers to a claim which he, with Tamehana Te Rauparaha, have made on the island of Mana. I have been in communication with Rauparaha, and also with Hohepa Tamaihengia, since Mr Weld’s reference of Matene’s letter to me; and I have reason to believe that there really does exist a rightful claim, though not to a large amount.

The difficulty is, that the Island has been granted by the Crown to one Mr Moreing, made under an Award of Commissioner Spain: and I have no means as Land Claims Commissioner of going into the question of title now. I have explained this state of affairs to the natives, and

⁷⁹⁶ Bell to Native Minister, 4 September 1861, MA 24/21 [Correspondence regarding the Mana Island Purchase], Archives New Zealand, Wellington.

believe that they would be willing to accept a small sum in satisfaction of their right. As they have been consistent both in the constant repetition of their claims on every occasion that I have been at the South, and in the statement that they would not interfere with Mr Moreing's grant, I recommend that the Chief Land Purchase Commissioner be requested to assess with me the amount that should be paid to the claimants, if the Government be disposed to admit their claim at all.

This indicates that by 1861 Mana Island had already been Crown-granted for some time to a private person, a Mr Moreing, under an award made by Commissioner Spain. Moreing being an Old Land Claims claimant. As has already been explained in this report, Spain did not deal only with the New Zealand Company transactions, but dealt also with other Old Land Claims in the Cook Strait area. If this turns out to be an important issue for negotiations with the Crown some brief additional supplementary research on Mana may be necessary. At any event the Ngati Toa chiefs Matene Te Whiwhi and Tamihana Te Rauparaha felt this to be a grievance, and had repeatedly referred the matter to Land Claims Commissioner Dillon Bell. Bell seems to have told Ngati Toa that it was now impossible for him to reconsider the circumstances leading up to the Crown grant.

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:⁷⁹⁷

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 Greivance 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 he 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

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F D Bell to Featherston, [September 8?] 1862, MA 24/21.

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 letter throws much more light on the matter, as it makes clear 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 wants 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.

B.. The Mana Island Deed

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.

8.12 Rangitikei/Manawatu Block

This very large and complicated purchase was the last major pre-emptive purchase in the Kapiti-Horowhenua region and has a particularly involved and convoluted history which has been explored thoroughly in a number of detailed reports.⁷⁹⁸ This block is in the Ngati Toa rohe in a broad sense, although in fact the main protagonists in the complex problems posed by this purchase were Ngati Raukawa and Ngati Apa and (at the governmental level) the national ('General' government) and the Wellington Provincial government. (Isaac Featherston, the Superintendent of the Wellington Provincial Government, resented the

⁷⁹⁸ See Victoria Fallas, *Rangitikei/Manawatu Block*, 17 November 1993, Wai 52 Doc#A3; Bryan Gilling, *'A Land of Fighting and Trouble': the Rangitikei-Manawatu Purchase*, A Report for the Crown Forestry Rental Trust, May 2000.

General government's control over land purchasing and did all he could to undermine it.⁷⁹⁹) It was the Wellington Provincial government that in the end purchased this block in 1866, which was specifically exempted from the Native Lands Acts of 1862 and 1865. The deed of cession contained 1647 names, including 64 Ngati Toa names. The purchase price for the block was £25,000, a substantial amount, which was allocated at first instance between Ngati Apa and Ngati Raukawa, who each had the responsibility of allocating some of the purchase price to their allies. Ngati Toa were in the Raukawa division, as might be expected, and shared in £1000 to be allocated amongst themselves and Ngati Awa.⁸⁰⁰ Whatever Toa's interests in this area might have been in 1840, by 1866 they had become only minor protagonists and did not play a significant role either in the negotiations with Featherston or in the protracted aftermath of this sale.⁸⁰¹

8.13 Waikato Area

It has been understood that it is a strong tradition within Ngati Toa today that the iwi regards itself as having permanently and completely uprooted itself from the Kawhia area and that no claim is made upon this area today. Nevertheless there is evidence that the Crown made a payment to Ngati Toa in 1858 for the extinguishment of their claims in the Waikato-Kawhia region. A report by Land Claims to Commissioner Searancke to the head of his department, (McLean) of 5 July 1858 refers to a payment of £240 paid in settlement of "Ngatittoa claims, west coast, Waikato".⁸⁰² Searancke adds:⁸⁰³

Ngati Toa Claims – This is a deed and receipt in full, for the claims of this tribe on all the lands sold to the Crown by the Waikato Natives on the west coast, between Kawhia and the Waikato River.

This was a reasonably substantial payment. Ngati Raukawa received only £20 for the extinguishment of their claims in the Waipa area.⁸⁰⁴

⁷⁹⁹ See Gilling, *'Land of Fighting and Trouble'*, 35.

⁸⁰⁰ Gilling, *op.cit.*, 159.

⁸⁰¹ The subsequent complexities arose largely because of the Native Land Court's findings regarding the adjacent Himatangi block, which had clear implications for the much larger adjoining Rangitikei-Manawatu block, and in particular whether Ngati Apa had any right to sell it. As the Crown wanted to defend the Rangitikei-Manawatu purchase it became involved in the Native Land Court proceedings, basically seeking to inflate the rights of Ngati Apa and denigrate those of Ngati Raukawa. Sorting out the competing rights and interests at this juncture would seem to be virtually impossible. The controversy took years to resolve, if it indeed it ever has been.

⁸⁰² Searancke to McLean, 5 July 1858, 1861 AJHR C1, 100-101.

⁸⁰³ *Ibid.*

⁸⁰⁴ *Ibid.*

9 The Nelson and Wellington Tenth's Native Land Court hearings and the Ngati Toa Trust

9.1 Introduction

There are a number of land-related issues which arise from the developments that took place before 1870. Three seem particularly important, these being:

- the investigation by the Native Land Court of the Wellington and Nelson Tenth's cases in the Native Land Court (to a large extent this issue is already dealt with thoroughly in existing research);
- the Ngati Toa Trust investigation; and
- the later history of the reserve blocks within the Porirua deed.

The last of these is especially intricate and important and will be dealt with in Report No. 2.

9.2 The Wellington Tenth's and Nelson Tenth's hearings

The Wellington and Nelson Tenth's case both arose under the same procedure, that is by means of reference by the Public Trustee under s 16 of the Native Reserves Act. The Wellington Tenth's case was heard in 1888 and the Nelson Tenth's case in 1892. Both were heard by Judge Mackay.

The Nelson Tenth's case is the counterpart to the Court's investigation of the Wellington Tenth's lands, heard under the same procedure at Wellington in 1888, with similar results for Ngati Toa in both cases. This is covered in my report on *Ngati Toa and the Upper South Island*, pp 285-294. It is important to note that Ngati Toa did not present any evidence in this case in its own right, and the case therefore lacks a distinctive 'Ngati Toa voice'. This should be kept in mind when considering evidence presented by other iwi claimants from the Nelson Tenth's case.

The conductor for the Koata-Toa case was Hohepa Horomona, who was Ngati Toa himself and lived at Porirua. He asked for an adjournment "to allow his party to arrange their case" but this was presumably refused: certainly the Court simply went on with the hearing. Other parties to the case seem to have been in similar difficulties. As the hearing was at Nelson and was initiated by a notice from the Public Trustee, Ngati Toa may not have heard

bout the case 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, however he certainly did not have the opportunity to bring a comprehensive Ngati Toa case before the Court.

Judge Mackay found that the Ngati Toa had rights only in Marlborough, not Nelson (the Toa localities according to him were Cloudy Bay, the Wairau and Pelorus Sound).

Mackay found that:

In the opinion of the Court the Members [7] of the hapus who took place in the conquest under Te Rauparaha who did not occupy the land 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 along without occupation confers no right.

Regardless of whether MacKay is right regarding the extent of Ngati Toa settlement west of Nelson (which seems incorrect based on the documents reviewed), Mackay did not have any justification for basing the claim to the Nelson Tenth on *occupation* at all. The Nelson Tenth was not in fact established to reflect occupation (areas in actual occupation were separately excluded from the grant). They were supposed to be in the nature of 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 Toa chiefs.

In addition, the Tenth was supposedly part of the compensation for the extinguishment of Maori title *as governed by Maori customary law as at 1840*. If the beneficial interests in the Tenth had been fixed at 1840 or soon afterwards when Ngati Toa was still a powerful presence with the authority of the chiefs recognised over a wide region, it is impossible to imagine the same result.

9.3 The Ngati Toa Trust Investigation

There is a large file at National Archives (MA 13/17) which deals with the Ngati Toa trust issue. This relates to the very protracted aftermath of the agreement made by Grey in 1853 to grant 200 acres to each of the 26 individuals of Ngati Toa. By 1868 nothing had been done to implement this arrangement. In that year Alexander Mackay, then Native Commissioner at Nelson, wrote to McLean, by this time Member for Napier and Provincial Superintendent of Hawke's Bay, enquiring as to what had happened. Mackay was concerned that there was a rapidly-diminishing supply of Crown land available, testimony in its own right as to how

rapidly the Nelson and Marlborough provincial governments had granted lands to settlers.⁸⁰⁵ McLean, who had his hands full with Pai Marire and Te Kooti in Hawke's Bay, did not respond.

In 1873 the issue of the extinguishment of Native title in the Northern South Island was placed into sharp focus by the "hole in the middle" claim put forward by Ngati Rarua and other groups. The argument was put on the basis that when the land was first sold to the New Zealand Company "they pointed out the land as that along the sea coast, and in the second sale to the Government such lands as were situated along the sea coast were again pointed out as the lands included in the sale".⁸⁰⁶ The tribes making this claim, which has affinities with a similar argument put forward by Ngai Tahu, raised it in the first place with McLean, now Native Minister in the Fox-Vogel government. The government in turn commissioned a long report from Mackay, who filed a very detailed memorandum carefully going through all of the Te Waipounamu purchases on 1 October 1873. His report was accompanied by a comprehensive map which showed that, at least to his satisfaction and the government's, the "hole in the middle" argument was without foundation.

The hole in the middle issue seems to have led to a renewed interest on the part of the government in finally settling such outstanding issues as still remained regarding the extinguishment of native title in Te Tau Ihu. By 1875 there were no suitable areas left where Ngati Toa could have their land. In 1878 and 1879 the Ngati Toa wrote to the government indicating that they had decided to accept a monetary settlement in lieu of the land. By 1879 there were only seven of the original 26 grantees still alive. There were further delays: in October 1879 Ngai Tahu filed a petition with the government asking that the matter of whether Ngai Tahu was entitled to the money be investigated.⁸⁰⁷

The Native Affairs Committee decided, however, that Ngai Tahu could have no possible claim to these monies: "the rights of the Ngati Toa tribe to the lands in question have been recognised for over a quarter of a century". An inquiry into who was entitled to receive the money on behalf of the original grantees was finally established in October 1880. The Commissioners were Thomas Heaphy and Alexander Mackay. Mackay prepared a list of the original 26 grantees, including the names of their descendants in the event of their having died, and the relevant places of residence. The five still left alive (Nopera Te Ngiha, Wi te Kanae, Tungia, and Matene Te Whiwhi) were all living at Porirua at this time, as were the descendants of most of others. Some of those entitled lived at Wakapuaka, Croixelles, and D'Urville. The sum settled on was L5200, but then Ngati Toa was dismayed to find that the

⁸⁰⁵ Mackay to McLean, 28 August 1868, MA 13/17, National Archives Wellington.

⁸⁰⁶ Pirimona Matenga Te Aupouri and others to McLean, 29 August 1873, MA 13/17. The groups making this claim were Ngati Rarua, Ngati Tama, Ngati Awa, and "Mitiwai".

⁸⁰⁷ Petition from Ngai Tahu of Kaiapoi, 20 October 1879, MA 13/17, National Archives, Wellington.

government decided to pay the lump sum to the Public Trustee, and the various individuals entitled be paid interest on an individual basis. This was not at all acceptable to Ngati Toa who clearly greatly resented this paternalistic interference in their affairs

On 14 January 1881 representatives of Ngati Toa petitioned the Governor-General (Sir Arthur Gordon) requesting that the compensation be paid out in full and in cash. The petition was signed by Ngahuka Tungia, Wi Parata, Hohepa Horomona, Raiha Puaha, Mere Te Rau, He Te Rei and others.⁸⁰⁸ Nopera Te Ngiha and Wi Parata went to see the Native Minister (Bryce) about it. Nopera Te Ngiha pointed out that Ngati Toa had had to wait for nearly 40 years for the government to keep to its promise and that the iwi was now almost landless: “it was very hard that having lost their land, they should lose the benefit of their land also”.⁸⁰⁹ He added:

If the money were paid out as the Hon. Native Minister suggested, certain individuals only would get the benefit of it. But if it was paid as the Maoris wanted, it would be divided out amongst them. Otherwise the tribal feeling would be broken up, and the money would be paid to individuals.

Bryce however felt that his hands were tied, and Ngati Toa’s request was declined.

9.4 Hohepa Tamaihengia and the Wellington Tenths Lands

Some documents have come to light which document an ongoing concern on the part of Ngati Toa regarding the Trust lands at Wellington. Some evidence for this is to be found in Tamihana Te Rauparaha's correspondence with Mantell. In July 1866 Tamihana Te Rauparaha, at that time living at Te Horo, wrote to Mantell as follows:⁸¹⁰

Friend Mantell, greetings to you. Hohepa Tamaihengia has been to see me. He told me that you had told him - probably he had asked you - whether he could come to see Matene [Te Whiwhi] and me about preparing a memorandum setting out some of the Maori Reservations within the town of Wellington and for you to make an announcement to the gathering. Perhaps Hohepa hopes to obtain some of the said lands.

Therefore I am asking you, is it correct that Hohepa Tamaihengia has told me or is it false? Nevertheless, I wish you write to me so that it will be clear to me. It may be Hohepa is under a misapprehension.

⁸⁰⁸ Petition by Ngati Toa to the Governor-General, 14 January 1881, MA 13/17, National Archives, Wellington.

⁸⁰⁹ The minutes of the discussions are on MA 13/17.

⁸¹⁰ Tamihana Te Rauparaha to Mantell, 16 July 1866, MS 83/192A, ATL.

I did not fully understand what he told me. I should be glad if you would let me know as soon as you can Thursday's mail.

This indicates, then, that Hohepa Tamaihengia wished to prepare a "memorandum" in association with the two leading chiefs, Tamihana Te Rauparaha and Matene Te Whiwhi, regarding the "Maori reservations" at Wellington, and that Hohepa had some hope of gaining a legally recognised interest in some of the lands. Hohepa Tamaihengia himself lived at Porirua and was a chief of Ngati Toa. He had travelled south in the main Ngati Toa migration led by Te Rauparaha.⁸¹¹ He was one of the group of Ngati Toa taken prisoner by Major Durie when Te Rauparaha was kidnapped on Grey's orders in July 1846.⁸¹² Hohepa Tamaihengia was one chief who felt strongly that Ngati Toa had rights in Wellington. In 1868, in the Himatangi case, he told the Native Land Court:

I have signed the deed of sale. It was my land. It was all mine - all the land is mine, to Wellington and Wairarapa...The boundary of my mana is at Whangaehu. When Rangitikei was sold that land was under my mana. I and Ngati Toa sold the land in the Middle Island. The occupiers of the land were on it at the time. I sold it - they did not sell it, I sold it and gave them part of the money: - it would not be right for them to sell, because I was their rangatira.

Hohepa Tamaihengia thus appears to have been a conservative, older Ngati Toa rangatira who had no doubt at all of Ngati Toa's rights as holders of the mana over the extensive lands they had conquered. He is also known to have lived at Wellington at one time and to have been involved in business there. As a younger, self-consciously "Mihanere" chief, Tamihana Te Rauparaha himself may not have been so sure. Judging by his letter to Mantell, Tamihana Te Rauparaha does not himself seem very certain about the situation and is dependant on Mantell for advice. So far no further documents have come to light to throw more light on this episode.

9.5 The Wellington Tenths Decision and Ngati Toa

Mackay's decision in the Wellington Tenths case⁸¹³ is something of a puzzle, as there is strangely little evidence actually recorded in the Minute Books. The evidence is mainly that of Kere Ngataierua and Mahini of Ngati Tama. Hohepa Horomona, who was undoubtedly

⁸¹¹ See Hohepa Tamaihengia's evidence in the Himatangi case, (1868) 1 C Otaki MB, 398-9: "Hohepa Tamaihengia, sworn. [I live at] Porirua, [I am] Ngati Toa....I came in the same 'heke' with Te Rauparaha."

⁸¹² Cowan, *NZ Wars*, I, 120.

⁸¹³ Commencing at (1888) 2 Wellington MB 99.

Ngati Toa, did hand in a list of names to Mackay, and he did cross-examine the Ngati Tama claimants. but to date I have been unsuccessful in locating any records of Ngati Toa evidence given in this hearing. Judge Mackay described the objectives of the hearing as follows.⁸¹⁴

The object of the inquiry which has taken place has led to an investigation of the claim preferred by [Rere Ngataierua?] and others being members of the four hapus known as Ngati Tu, Ngati Ronganui, Ngati Rangitahi, Ngati Uru, to the joint ownership of the tract of land known as Port Nicholson Block sold by the Natives in 1839 to the New Zealand Company, who to ascertain who were the bona fide owners of that block at the aforesaid date, and for this purpose an inquiry was instituted in respect of the persons who occupied the various native settlements round the harbour (Wanganui-a-te-ra) viz, at Te Aro, Kumutoto, Pipitea, Tiakiwai, Pakuae, Kaiwharawhara, Ngaurang, Pitoone, and Waiwhetu, inclusive of others living at Ohariu and elsewhere on the western side.

In the course of the inquiry it was alleged by Rere Ngataierua that at the time the Company bought the land in 1839 the 84 persons enumerated by him were residing at Tiakiwai and belonged to these hapus and he claims on their behalf that [131.] they were joint owners of the territory sold to the Company by the other hapus.

To deal with this question Mackay insisted that it was necessary to consider the tribal history of the Wellington region:

For the purpose of determining the matter it is necessary to start from the period of time when the northern tribes made their first inroads over this part of the North Island. It has been ascertained from other sources that the first body of the Northern natives who came south was a marauding party of the Ngapuhi and Ngati Toa under Wakan Nene, Patuone, Te Rauparaha and other leaders. The first conflict that took place on the way south was with the Ngati Ruanui and after fighting their way down the coast they ultimately reached Otaki where they rested for a while.

The hostile party then continued its course destroying numbers of residents on the way and ultimately reached Wanganui a Tera then occupied by the Ngati Kahungunu who, alarmed at the approach of the invaders, had fled to Wairarapa where they were pursued and slaughtered in large numbers, the fugitives escaping to Ahuriri from whence they finally took refuge at Nukutaurua on the Mahia Peninsula.

Following this preliminary foray came the main migrations:

[132] After the raid was over the war party returned North but Rauparaha, who had perceived the value of the country, had conceived an idea of leaving the ancient possessions of his

⁸¹⁴

Ibid, 130.

people at Kawhia for the purpose of settling at Kapiti. After a period of repose and rest in commemoration of the southern victories Rauparaha began to prepare his plans for returning to Kapiti. After making the necessary arrangements he started south and was joined by a party of Ngati Awa under Wi Kingi Rangitahi, Rere Te Wangawanga [sic] and ultimately settled down at Kapiti about the year 1820. About six years (1826) after this Rauparaha was attacked at Waiorua (Kapiti) by a large party of the former owners as well as members of other hapus. A number of tribes joined in the attack including people from the South Island. The attacking party were repulsed with great slaughter and no further attempt was made after this to dislodge Rauparaha's party.

For many years until the [133] arrival of additional migrations from the North Island about 1827 the country south of Kapiti was not much occupied by the invaders. The first people to take possession of the Port Nicholson District were the Ngati Mutunga. About this time also the Ngati Tama and Ngati Awa settled at Ohariu and other places on the coast south of Porirua.

A few years before Ngati Mutunga migrated to the Chathams, Patukawenga, one of their principal men, made a present of part of the Hutt District about Whaiwhetu [sic] to Te Matehou in payment for revenging the death of some of the Ngati Mutunga killed by Ngati Kahungunu and on the Ngati Mutunga leaving for the Chathams in 1839⁸¹⁵ the Ngati Awa who had been living for some time in the Wairarapa where they had gone on a fighting expedition returned to Wellington and took possession of all the district formerly owned by the Ngati Mutunga and were found in possession by the New Zealand Company to whom they sold [134.] this territory in the same year.

Mackay thought that the only other group, apart from those who sold the harbour in 1839, who could plausibly advance a claim, would have been Ngati Toa themselves.

The only hapus who would have been justified in making a claim to the territory sold by the Ngati Awa in 1839 were the Ngati Toa but the only part of the [] [] they preferred a claim to was the Porirua district for which [137.] they received a final payment in 1847. It will be seen therefore that although Ngati Toa and the other hapus conquered the district in 18[] that they made no attempt to make a claim to the land against the resident hapus at the sale to the Company in 1839, but allowed them to sell such portions as they were considered to be entitled to. The Court is therefore of opinion that the Port Nicholson Block at the time it was sold was the property of the hapus of Ngati Awa and Ngati Tama then in occupation and that the four hapus, viz, the Ngati Tu, Ngati Ronganui, Ngati Rangitahi, and Ngati Uru had acquired no rights of ownership through residence over the land in question that would now justify a claim being now preferred on their behalf.

⁸¹⁵ Sic. The usually accepted date is 1835.

The 84 names submitted by Kere Ngataierua, subject to the elimination of any bona fide claimants who have been included, will have therefore to be withdrawn from the list of original owners.

In making these observations, Mackay was obviously unaware of Ngati Toa's participation in the compensation for Wellington negotiated in early 1844, of Spain's meetings with Te Rauparaha and Te Rangihaeata in 1844, and (most surprisingly perhaps) of the fighting in the valley from 1844-46.

The net effect of Mackay's decisions was to exclude Ngati Toa from any ability to participate in the benefits of the Wellington or Nelson Tenths trusts, a situation that has endured to the present day. The gross unfairness of this is obvious. It is elementary that Ngati Toa had rights in both areas, and in fact Commissioner Spain's Nelson report specifically mentions the New Zealand Company's dealings with Te Rauparaha and Te Rangihaeata as one of the reasons why the Company was entitled to a grant. Moreover, no 'Tenths' reserves were ever established in any of the blocks that the Crown purchased from Ngati Toa. The closest approximation to setting aside a 'Tenth' was the very large reserve made in the Wairau block, but as seen above this reserve was eliminated in 1853.

The non-inclusion of Ngati Toa in the Wellington Tenths reserves has already been found to be a Treaty breach on the part of the Crown by the Waitangi Tribunal in its *Te Whanganui a Tara* Report. This is an important finding. The Tribunal said.⁸¹⁶

The Tribunal finds that the Crown failed adequately to recognise, investigate, or take into account the full scale and nature of the Ngati Toa interests in the Port Nicholson block area; that it failed adequately to compensate Ngati Toa for its loss of such interests; *and that it failed to ensure that Ngati Toa gained an equitable interest in the rural and urban tenths reserves*. As a consequence, the Crown failed to act reasonably and in good faith and failed to protect the customary interests of Ngati Toa in and over the Port Nicholson block, and, in particular, Heretaunga, and Ngati Toa were prejudiced thereby.

Later in the report the Tribunal noted that "the effect of this finding cannot result in Ngati Toa being included as beneficiaries in the Wellington tenths reserves, because the beneficiaries were determined by the Native Land Court in 1888".⁸¹⁷ Nevertheless Ngati Toa are, in the Tribunal's view, entitled to "compensation" for this exclusion.

⁸¹⁶ Waitangi Tribunal, *Te Whanganui a Tara*, 220.

⁸¹⁷ *Ibid*, 481.

10 Conclusions

The scale and rapidity of Ngati Toa's loss of land in the period from 1847-1859, just twelve years, is staggering. To really grasp this, however, and notwithstanding the fact that the main focus of this report is on the North Island, it is essential to bear in mind that Ngati Toa interests were on both sides of Cook Strait.

The collapse began with the Wairau and Porirua deeds of 1847. Huge areas in 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. In the following year 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. 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 much larger Wainui block was acquired. An area at Papakowhai was acquired in 1862 and then in 1865 Mana Island was acquired as well. By 1862 the iwi was reduced to the Porirua and Wairau block reserves and Kapiti Island (it was to lose Kapiti as well, in the 1890s, in circumstances that Report No 2 will explain, and in addition the Crown was to help itself to endowed lands in one of the Porirua reserves, at Whitireia).

Quantifying these areas is difficult because the deeds themselves often do not even attempt 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 gives no defined boundaries at all: the only boundaries described with any precision are the 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.⁸¹⁸ 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

⁸¹⁸ Waitangi Tribunal, *Te Whanganui a Tara*, 255.

Wainui block was estimated to contain about 30,000 acres,⁸¹⁹ and the Waikanae block about 95,000.⁸²⁰ 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.

This report has argued that the struggle between Ngati Toa and the Crown was a struggle for power as much as was a struggle for land. This gives a distinctive quality to Ngati Toa's claims for redress against the Crown. Ngati Toa was a power base in its own right, a military and strategic obstacle to the Crown's plans. (This does not mean 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 Crown, 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, more than enough, in my judgment, to give that event an official character.

Although this report has concentrated very much on the actions of Governor Grey, the notion that Grey was acting as an autonomous agent on the imperial frontier, doing what he pleased, and artfully concealing his Machiavellian designs from the Colonial Office, is a myth. Grey was executing imperial policy. The decision to take all necessary steps to aid the New Zealand Company at Porirua and Wairau was taken in London, and communicated to Grey by Gladstone. Grey carried out that policy to the best of his ability. His seizure and detention of Te Rauparaha certainly went beyond his brief, but what is really significant is that the Colonial Office, aware of the illegalities, deliberately chose to take no steps. Grey was never censured for his actions, and following his term in New Zealand was actually promoted (to the Cape Colony).

No other iwi, as far as I am aware, had the experience of having its great chief illegally kidnapped and detained, followed land being acquired from his people in his absence. This was an absolutely unique event in New Zealand history. To find parallels for it one has to look elsewhere. There are perhaps some parallels with Cortes' seizure of Montezuma in 1521 and Pizarro's seizure of Atahualpa in Peru in 1532. But maybe Grey had a more recent precedent in mind. In South Africa in 1835 the great Xhosa chief Hintsa was seized by Colonel Harry Smith and Benjamin D'Urban, the Governor of the Cape Colony (Grey himself was to become Governor at the Cape, of course). Hintsa had entered a British military encampment to enter into negotiations with Smith and D'Urban, was taken prisoner,

⁸¹⁹ Servantes to McLean, 6 July 1859, 1861 AJHR C1, 285.

⁸²⁰ Servantes to McLean, 6 August 1858, 1861 AJHR C1, 279.

and (like Te Rauparaha) was told he would be shot if he tried to escape. Hintsa then agreed to accompany Smith on an expedition to round up cattle, and while doing so attempted to escape. He was shot and killed, and his body mutilated. Hintsa is a great hero to the Xhosa nation of today.⁸²¹ Had Te Rauparaha tried to escape he may well have met the same fate. Grey could have been well aware of this precedent, set only twelve years before his own detention of Te Rauparaha.

These events had significant long-term consequences for New Zealand history. The last words can best be left to Ian Wards:⁸²²

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.

⁸²¹ On these events see especially Noel Mostert, *Frontiers: The Epic of South Africa's Creation and the Tragedy of the Xhosa People*, Pimlico, London, 1992, 712-726.

⁸²² Wards, *Shadow*, 281.

Appendix 1:

Chronology:

- 1770** (16 January) Cook, on his first voyage in the *Endeavour*, anchors at Ship Cove, Queen Charlotte Sound.
- 1773-74** On his second voyage Cook visits Queen Charlotte Sound twice in 1773 and once in 1774 in between his first and second island sweeps. In December 1773 a boat's crew from the *Adventure*, commanded by Captain Tobias Furneaux, is massacred and eaten at Grass Cove, Queen Charlotte Sound.
- 1824** Conventional dating of battle of Waiorua.
- cession of Rangitoto to Ngati Koata by Tutepourangi of Ngati Kuia.⁸²³
- 1827** John Guard establishes his shore whaling station at Te Awaiti in Tory Channel.
- 1828** Conventional dating of 'Ngati Toa invasion'.⁸²⁴ The force divides and the Ngati Awa section head up Queen Charlotte Sound to Waitohi (Picton) and the Ngati Toa section attack Rangitane, Ngati Kuia and Ngati Apa in Pelorus Sound (Te Hoiere) and Rangitoto (D'Urville); the latter was already ceded to Ngati Koata and there were some Ngati Koata already in Tasman Bay at the time of the invasion.⁸²⁵
- 1829** Te Pehi Kupe of Ngati Toa, who went to England in 1826 in order to buy muskets, joins the invading force at Pelorus. Following his arrival Te Rauparaha takes the main force southward to attack Ngai Tahu at Kaiapohia. The remaining forces then move west, entering what is now Nelson Province through French Pass; the conquest of Nelson is undertaken mainly by Te Atiawa assisted by Ngati Rarua and by Ngati Tama under Te Puoho (Allan⁸²⁶). Wakatu (Nelson) they find deserted. The pa at Waimea is destroyed, as is the pa at Te Mamaku near Moutere; following this the Ngati Apa 'were soon despatched'.⁸²⁷ The last stage is the expedition by Te Niho and Takerei down the West Coast.
- 1830** Conventional dating of end of the conquest of the Upper South by the coalition forces.⁸²⁸
- 1833** (Jan) Ngai Tahu, having launched a counterattack against

⁸²³ Ruth M. Allan, *Nelson: A History of Early Settlement*, 23. Allan was sceptical of the Ngati Koata claim, but in fact it seems well-established and was accepted by the Native Land Court.

⁸²⁴ Ruth M. Allan, *Nelson: A History of Early Settlement*, 23.

⁸²⁵ Ruth M. Allan, *Nelson: A History of Early Settlement*, 23.

⁸²⁶ Ruth M. Allan, *Nelson: A History of Early Settlement*, 24.

⁸²⁷ Ruth M. Allan, *Nelson: A History of Early Settlement*, 24.

⁸²⁸ Ruth M. Allan, *Nelson: A History of Early Settlement*, 23. Allan follows *Old Tasman Bay* ch V-VII, and Smith, *History of the Taranaki Coast* ch XVI. Allan names the participating tribes as Toa, Rarua, Koata, Mutunga, 'some Puketapu', Te Atiawa, Manu Korihi, Raukawa and Tama. The expedition collected at Kapiti, crossed to Point Jackson in the Marlborough Sounds. Te Atiawa, she says, went up Queen Charlotte Sound 'as far as Waitohi' (24), but 'it is not clear whether they settled there permanently'.

Ngai Tahu, the *Taua-iti*, reach Kaikoura.⁸²⁹ Te Rauparaha, having gone to Kaparatehau (Grassmere) to trap duck only narrowly avoids capture. Ngai Tahu launch a further attack the following year, the *Taua-nui*.⁸³⁰

1834 Te Awaiti is sacked.⁸³¹

1836 **(May)** William White, the Wesleyan missionary, visits Cloudy Bay.⁸³²

1837 **(July)** Reverend Samuel Marsden visits Cloudy Bay. He is with Captain Hobson on board H M S *Rattlesnake*.⁸³³

1838 The brig H.M. *Pelorus* visits Cook Strait; she is piloted up Te Hoiere by John Guard and the sound is named Pelorus Sound.⁸³⁴

James McLaren, mate of the barque Cheviot, is given some land on the eastern side of Croisilles harbour.⁸³⁵

(20 September) First of the deeds made by Nohorua of Ngati Toa granting land to Joseph Toms "for his good and the good of his Children, they being his Grandchildren".⁸³⁶

1839 **(Feb)** Wards argues that by this time the Colonial Office had decided to acquire sovereignty over all of New Zealand.⁸³⁷

(14 Feb) Hobson accepts the offer of appointment as British Consul to New Zealand. The plan was that Hobson would become Governor of ceded portions of New Zealand and consul to the rest of the place.

(April) The New Zealand Company finalises its arrangements for sending a preliminary expedition to New Zealand.

(May) The Wesleyan missionaries J.H. Bumby and John Hobbs visit Port Underwood.⁸³⁸

⁸²⁹ See generally Evison, *Te Wai Pounamu*, 64-66.

⁸³⁰ Evison, *Te Wai Pounamu*, 69-70.

⁸³¹ Ruth M. Allan, *Nelson: A History of Early Settlement*, 26.

⁸³² Ruth M. Allan, *Nelson: A History of Early Settlement*, 28.

⁸³³ J R Elder (ed), *Letters and Journals of Samuel Marsden*, 530. This was Marsden's seventh and last voyage to New Zealand; he was old and ill by this time and did not keep a journal of the voyage; he died the following year.

⁸³⁴ Ruth M. Allan, *Nelson: A History of Early Settlement*, 27.

⁸³⁵ Ruth M. Allan, *Nelson: A History of Early Settlement*, 29: "Captain James McKenzie Maclaren, Nelson's first white settler, did not buy land, although he was allowed to occupy enough for a farm. He had been mate of the barque *Cheviot*, trading between Sydney and New Zealand, and is believed to have left that vessel in 1836 to settle in New Zealand, probably at Cloudy Bay. In 1838 the Maoris gave him about 150 acres on the east side of Croisilles harbour. In 1856 he filed a claim for this under the Land Claims Settlement Act of that year, when he stated that he had retained it in quiet possession ever since he had first received it. He did not, however, proceed with the claim, and it was abandoned in 1880, when he failed to appear in court (Maclaren to Bell, 14 Nov 1856, with minute 3 March 1880. OLC 1315.)

⁸³⁶ LS-N 45/1b; Hippolite, *The George Hori Thoms and Colonial Laws of Succession Claim*, Wai#785 I.15, 2.

⁸³⁷ Wards, *Shadow*, 26.

⁸³⁸ Ruth M. Allan, *Nelson: A History of Early Settlement*, 28: "When the Wesleyans, J.H. Bumby and John Hobbs, called at Port Underwood in May 1839 they found some of the outer Christian

(15 June) Queen Victoria signs Letters Patent which alter the definition of the boundaries of New South Wales to include “any territory which is or may be acquired in sovereignty by Her Majesty...within that group of islands in the Pacific Ocean, commonly called New Zealand”.

(11 July) Final draft of the instructions to Hobson approved by Normanby.

(17 August) The *Tory* arrives at Ship Cove, Queen Charlotte Sound

(20 September) The *Tory* and William Wakefield arrive at Pito-one. Wakefield had earlier picked up Richard Barrett. They are greeted by Te Puni and Te Wharepouri of Te Ati Awa.

(27 September). New Zealand Company’s Port Nicholson deed. There are 16 signatories to the deed, about half of them from Pito-One. The deed includes a specific promise to set aside “a portion of the land ceded by them, equal to one-tenth part of the whole...”⁸³⁹

(September) The first NZ Company emigrant ships, bound for Port Nicholson, the *Oriental*, the *Aurora* and the *Adelaide* sail from Gravesend.

(14 October) A second deed is made by Nohorua in favour of Joseph Toms and his family.⁸⁴⁰

(25 October) New Zealand Company’s Kapiti deed.⁸⁴¹ This is signed by nine Ngati Toa chiefs who supposedly cede to the Company land from the 43rd parallel in the South Island to Wanganui. Ruth Allan sees the Company’s claim to Nelson as flowing essentially from this second NZ Co deed.⁸⁴²

trimmings in vogue, which was all the more remarkable because of the 'pernicious influence' of the godless pakeha nearby. These men went away determined to reward such deserving savages with a mission station.'

⁸³⁹ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 1, pp 95-97. The clause in full reads:

And the said William Wakefield on behalf of the said Governors, Directors and Shareholders of the New Zealand Land Company of London their Heirs Administrators and Assigns for ever does hereby covenant, promise and agree to and with the said Chiefs that a portion of the land ceded by them equal to a tenth part of the whole, will be reserved by the said Governors, Directors, and Shareholders of the New Zealand Land Company of London their Heirs, Administrators and Assigns, and held in trust by them for the future benefit of the said Chiefs, their families and heirs for ever.

⁸⁴⁰ LS-N 45/1b; Hippolite, *The George Hori Thoms and Colonial Laws of Succession Claim*, Wai#785 I.15, 2.

⁸⁴¹ For a copy of the deed see Mackay, I, 64-5. The deed is signed by Te Hiko: Rauparaha, on behalf of himself, Naoranga and Nohorua; Tungia; Te Whetu, for himself and Mure; Taki; Etou; Paioki; Tamaihengia; Rangihiroa; Tutahanga; and Te Rangihaeata.

⁸⁴² Ruth M. Allan, *Nelson: A History of Early Settlement*, 41: "As Rauparaha was a key figure in the Cook Strait area, it was essential to secure his consent to the purchase. The *Tory* therefore anchored off Kapiti on 16 October. 'In resolving to visit and conciliate this old savage, however strong my repugnance to his [42] character and practices, I am more led by the hope of acquiring his land on which to locate a society which shall put an end to his reign, than by any good wishes to him, or to obtain influence with his presumptive successor, Hiko, who bears a much better character,' said the Colonel. [W.W., Diary, 14 October 1839] A deed was drawn up by Edward Jerningham Wakefield, which after 10 days of discussion was signed by the Ngati Toa and Ngati Raukawa chiefs between 24

Rauparaha later says that he had meant to sell Taitapu, but not the Wairau; Allan guesses that by "Taitapu" he meant "both Golden and Tasman Bays"; Spain thought Taitapu meant Massacre (i.e. Golden) Bay.⁸⁴³

(8 November) New Zealand Company's Queen Charlotte Sound or Te Ati Awa deed. This deed is identical to the Kapiti deed of 18 October.⁸⁴⁴

(December) James Crawford and Arthur Elmslie visit a large Ngati Raukawa settlement on D'Urville Island where the chief is Te Whetu.⁸⁴⁵ Shortly after he buys six blocks of land between Wakapuaka and West Whanganui from Ngati Awa chiefs. But he never pursues these claims.⁸⁴⁶

1840 **(14 January)** Gipps' proclamations, one of which disallows any further private purchasing in New Zealand.

(30 January) Hobson reads his proclamations at Kororareka.

(21 May) Hobson's proclamations of sovereignty over the North Island by cession and the South Island by discovery. Evison argues that Hobson later *abandoned* the claim to the South Island by "discovery": he "omitted these words from subsequent printings of the Proclamation, relying instead on the South Island Treaty signatures".⁸⁴⁷ Hobson's action is precipitated by learning of 'that members of the New Zealand Company at Port Nicholson had formed themselves into a government, elected a Council, appointed Colonel Wakefield as president, and enacted laws and appointed magistrates'.⁸⁴⁸

(25 May) A military detachment commanded by Shortland sails under Hobson's orders to Wellington on the *Integrity*.

(28 May) Gipps' New Zealand Land Claims Bill is introduced into the New South Wales Legislative Council. This enacts the doctrine of pre-emption into law, sets up a Land Claims Commission and stipulates that the maximum permitted amount for any one claim is 2,560 acres (4 square miles).

and 28 October, although it was dated 25 October. Rauparaha and his young nephew, Hiko, signed on the 24th, a group of 11 chiefs, including Nohorua, Tungia, Whetu from Rangitoto, and Charley or Hengia from Cloudy Bay, on the 25th, when the payment was distributed. Rangihaeata added his signature on the 28th. The only chief from Nelson Province to sign was Whetu, but he, said young Wakfield, 'played only second fiddle among this *creme de la creme* of New Zealand aristocracy'. Colonel Wakefield thus purported to buy, as already said, all the land between the line drawn through Mokau, and the 43rd parallel."

⁸⁴³ Ruth M. Allan, *Nelson: A History of Early Settlement*, 43. Allan's verdict on the sale is as follows (ibid):

Whatever the contracting parties considered they had accomplished by this extraordinary piece of business, they were all destined to suffer some surprises. There were unclean hands on both sides. Colonel Wakfield convinced himself that a valid purchase had been made, despite the thousands of Maoris with land rights who he had not consulted. Several of the signatory chiefs were old hands at land sales, and no doubt regarded

⁸⁴⁴ For a copy of the deed see Mackay, I, 65-66.

⁸⁴⁵ Ruth M. Allan, *Nelson: A History of Early Settlement*, 30. See Tod's evidence 26 May 1842 OLC 229/465; Crawford's *Records of Travel*.

⁸⁴⁶ Ruth M. Allan, *Nelson: A History of Early Settlement*, 31-32.

⁸⁴⁷ Evison, *Te Wai Pounamu*, 141.

⁸⁴⁸ Wards, *Show*, 47; Hobson to Sec.State, 23 May 1840, G 36/1, pp. 90-9.

(June) Henry Williams collects Treaty signatures at Queen Charlotte Sound and Port Hardy (D'Urville Is.).⁸⁴⁹

(17 June) At Cloudy Bay Bunbury and Nias proclaim British sovereignty over the South Island by cession. They have a total of 16 South Island signatures - 7 Ngai Tahu and 9 Ngati Toa (all the Ngati Toa signatures are at Cloudy Bay, including that of Nohorua, Te Rauparaha's brother).

(4 August) Gipps' Bill is enacted, Wentworth resigning his commission as a J.P. in protest.

(7 August) Imperial Statute, 3&4 Vict., c LXII, which gives to the Crown authority to make New Zealand into a separate colony.

(November) Agreement between the New Zealand Company and the British government is drawn up in England.⁸⁵⁰ The agreement recognises the Company as an official colonising body. By this agreement the 'tenths' vest in the Crown. The Company agrees to waive its claims to land in New Zealand founded on the 1839-40 deeds and instead it is agreed that the Company was entitled to receive 4 acres of land for every £1 spent. Charles Pennington is appointed as independent account to review the Company's accounts.

(16 November) Two weeks after learning of the acquisition of sovereignty in New Zealand, the Crown issues Letters Patent making New Zealand a Crown Colony in its own right separate from New South Wales. This is pursuant to the Imperial Act of 7 August .

(December 20) Rev. Samuel Ironside arrives at Port Underwood to establish the Wesleyan mission at Cloudy Bay.

1841 **(20 Jan)** Spain is appointed as Land Claims Commissioner.

⁸⁴⁹ Ruth M. Allan, *Nelson: A History of Early Settlement*, 45.

⁸⁵⁰ Tonk, "Difficult and complicated question", 36-7.

The November 1840 agreement established the terms under which the British Government gave the New Zealand Company a Charter of Incorporation. The first head of the agreement dealt with the retrospective adjustment of the Company's land claims. On the basis of Company's expenditure on their colonisation project, both in New Zealand and Great Britain, a Crown grant for four times as many acres as pounds spent was to be issued. The estimate of the Company's expenditure would be made by James Pennington, an accountant nominated by the Government. The areas for which the Company could receive the grant were those to which it had established a claim before Hobson's arrival in New Zealand: in particular, 111,000 acres in the Port Nicholson area and 50,000 acres at New Plymouth. Any claims to other land had to be abandoned. This meant that the Company agreed to give up its interests in most of the 20 million acres which it had first claimed. In exchange the Company received a smaller, but more secure. title. Furthermore, if the local Government had already taken 'Company lands' allocated to a settler and granted them to a non-Company person, the Governor was not required to reverse his decision or compensate the Company settler. Finally, the Company would not be exempt from the local Government's regulations concerning the reservation of lands for public use.

The November 1840 agreement assumed that the Company's original land purchases were valid - an assumption that was accepted by the Company's representatives in Great Britain and New Zealand. The British government's subsequent decision to appoint a commissioner to investigate the Company's claims before confirming them with a Crown grant was also unhesitatingly accepted by the Governor of the New Zealand Company, Joseph Somes.

(3 February) Bryan Duppa, one of the Wakefield circle, puts forward a plan for a second settlement to the Company.⁸⁵¹

(12 February) New Zealand Company is issued with its charter. By this time the Company has decided to establish a second New Zealand colony.

(15 February) Captain Arthur Wakefield is made leader of the Nelson expedition. Most of the organisational work is done by Duppa.

- NZ Co issues a prospectus for the sale of 201,000 acres in the Nelson settlement, 1,000 allotments of 201 acres each. Each allotment consists of a rural section (150 acres), a suburban section (50 acres) and one town acre. Each allotment costs £300.⁸⁵²

(27 April) The *Whitby* and the *Will Watch* sail from Gravesend carrying the preliminary expedition for the new Nelson colony (although it has been established that it will be called Nelson, its whereabouts is yet to be decided). The settlers are led by Captain Arthur Wakefield. Chief surveyor and second in command is Frederick Tuckett.

(28 April) Pennington finds that the Company is entitled to 531,929 acres on the basis of the November 1840 agreement.

(June) New Zealand Company conducts a ballot of land in the Hutt valley.

(9 June) Land Claims Ordinance 1841. Section 2 provides that "the sole and absolute right of pre-emption from the aboriginal inhabitants vests in and can only be exercised by Her Majesty". It also states that "all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said colony, are and remain Crown or Domain Lands of Her Majesty". This aside, the ordinance is virtually identical to Gipps' bill of the previous year. (This reference includes general references to the land issue in the early colonial period. First, Ward notes (i) Maori attitudes to lands, including in particular the strong attachment to pas, cultivations, food-gathering places, and burial grounds; (ii) the New Zealand Company's stance, as enunciated by Dr Arnold and by E.G. Wakefield; (iii) the position of the government, which had little choice but to carry on with the policy begun at Waitangi; and (iv)

⁸⁵¹ Ruth M. Allan, *Nelson: A History of Early Settlement*, 49: "The formal procedure by which plans were set in motion was peculiar, in that it made the original proposal appear to originate outside the Company. Mr Bryan Edward Duppa of Hollingbourne House in Kent, a Wakefield family friend, gathered together a committee of a few persons, who, like himself, intended to emigrate to New Zealand within a year. This committee formed itself into a society called the 'Second Colony of New Zealand', with Duppa as chairman. The other members were Dr G F Bush, Messrs W O Cautley, F Cooper, J S Cotterell, A Domett, W Dickenson, W B Patchett, A Saunders, W L Shepherd, T J Thompson, F Tuckett, J F Tytler, W C Young, and Captains A Wakefield and J H Wilson. They wished to purchase a large tract of land from the Company, but with a few amendments to the Port Nicholson plan (N.Z. Journal, 15 February 1841, p. 39; 4 September 1841, p 217.) They wished to establish a second settlement, which would be 'not the rival but the helpmate' of the first. As they concluded from Lord John Russell's agreement [Allan means the November 1840 agreement] that they would be at liberty to choose land in any part of New Zealand at the disposal of the Crown, they suggested that the site be left unfixed at present, the selection being reserved for the Company's agents in concert with the colonial government, as local knowledge would facilitate the best choice. The scale of the second colony should be considerably larger than that of the first.

⁸⁵² Jellicoe, *NZ Co's Native Reserves*, 33.

the Colonial Office, which in general held to an intermediate position between that of the NZ Company and the Colonial government.)⁸⁵³

(17 September) The *Fifeshire*, *Mary Ann* and *Lord Auckland* sail from London with the remaining Nelson settlers. On the 8 and 18 September the first two Nelson ships reach Port Nicholson. Hobson happens to be in Wellington at the time, and there are somewhat acrimonious discussions with him about a site for a second colony (which Hobson does not want, but cannot prevent⁸⁵⁴). Hobson indicates that the colony must be established in Blind Bay (Tasman Bay), the most suitable area in the area claimed to be purchased by the Company in 1839.

(9 October) The Nelson preliminary expedition sails to Blind Bay, and shore parties begin exploring for a suitable place to establish the new settlement. One of these parties finds Nelson Haven and Wakefield decides that the colony should be established here.

(19 October) William Swainson, Hutt Valley settler, complains to Halswell, the Commissioner of Native Reserves, "that certain natives of Porirua had begun to form new settlements on the banks of the Hutt, not merely upon

⁸⁵³ **LAND ISSUES IN THE EARLY COLONIAL PERIOD**

Wards, *Shadow*, 55-7:

Deeper shadows were gathering at Port Nicholson. These arose from the struggle to possess land and the title to that land, and if we are to follow the vital issues of the next two decades it is necessary to have some understanding of what was involved. [The student will have to consult a number of authorities. Best, Buck, White, Smith, Martin, Marshall, Colenso, Busby, these the author found useful.] To the Maori the free use of land - his own and his tribe's - was the mainspring of life. The pas and cultivations, the eel ponds, tidal mud flats and fishing beaches, the trees in which the tuis and pigeons congregated and the swamps with their reeds and flax and water-fowl, all of these were his material possessions. The burial grounds and the tapu'd places were part of his spiritual life. These the Maori would never willingly sell. No war could ever extinguish his title to them - he might be driven away, but normally waited the time until he could become strong enough, or until tribal alliances could be so arranged, to repossess his own. The land was owned collectively, yet application of personal labour or the labour of slaves gave the individual personal, devisable possession within the framework of tribal ownership. No *ariki* or great chief had the disposal of such land. Yet such a chief could, and did, give or sell, barter for peace, for war or for marriage portions, normally but not exclusively with the agreement of the tribe, unoccupied segments within tribal territories.

This land, these possessions, were guaranteed by the Treaty of Waitangi. Before and after the Treaty it seems that the Maoris believed that no sale included anything but land that was idle, although [56] inside tribal territory. White settlers before Hobson were, in a sense, received within the protection of the tribe; in the same sense their land, through the application of their labour, became their personal property. Where, after 1840, land was bought that did not include any of these Maori "possessions", and where due regard was paid to long-standing Maori "title", there was little trouble; where scant regard was given to these factors very serious complications arose. Unfortunately for the peace of the colony, these complications were first evident at Wellington, remote and resentful of government interference, and soon embroiled first the Company and the Government and then the Government and the Maoris in bitter controversy that ended in war.

The fundamental difference between the Company and the local government in their attitude to the Maoris and their land is quite clear. The attitude of the Company was never disguised and was probably supported by the majority of people who gave any thought to the matter.

⁸⁵⁴ Ruth M. Allan, *Nelson: A History of Early Settlement*, 65-66.

lands belonging to the Company, but upon sections which have been given out to individuals”.⁸⁵⁵

(29 October) At the request of a chief named Piko, Captain Wakefield attends a meeting at Kaiteriteri to discuss the payment of compensation to local Maori for the Nelson settlement.⁸⁵⁶ This meeting is called by the Motueka chiefs. Wakefield asks the chiefs to recognise the 1839 sale by Te Rauparaha,

(4 November) Preceded by the store ship *Arrow* the *Will Watch* and the *Whitby* sail into Nelson Haven.

(December) Commissioner Spain arrives in New Zealand.⁸⁵⁷

1842

(1 Feb) The “Fifeshire”, the first of the Nelson emigrant ships, arrives at Nelson Haven.

(early 1842) Te Rangihaeata prevents settlers from building houses at Porirua Section 57. The settlers offer to pay Te Rangihaeata for the section but he refuses payment. The houses are carefully dismantled, and the timber tied up in bundles and returned to the owners.⁸⁵⁸

(February) Swainson complains again that more Maori are moving into the Hutt Valley. He tells Halswell (Commissioner of Native Reserves) that “because no effectual measures had been taken to dislodge these people, (against whom the people at the Hutt entertain a feeling of dislike, if not hostility), others of the same tribe have been encouraged to make further inroads upon us, by descending down the river”.⁸⁵⁹

(26 March) Commissioner Spain receives his instructions from Governor Hobson.⁸⁶⁰

(April) The Town survey of Nelson is completed and the Native reserve sections are selected by H.A. Thompson as agent for the Bishop of New Zealand and the Chief Protector (trustees of Native Reserves). 100 of the 1100 town selections are selected (i.e. one-eleventh).⁸⁶¹

(April) Allocation of ‘country’ sections and reserves in the Wellington district by **Halswell**, who is Commissioner of Reserves for the Southern

⁸⁵⁵ *The Spectator*, 17 December 1842, cited Hayes *Hutt Valley* 5.

⁸⁵⁶ Ruth M. Allan, *Nelson: A History of Early Settlement*, 73-74.

⁸⁵⁷ Ruth M. Allan, *Nelson: A History of Early Settlement*, 48.

⁸⁵⁸ Report of George Clarke jr., 13 December 1842, GBPP, vol 2, 1844, App. 124, cited Anderson, *Historical Overview of Wellington Region*, CCJWP report, n.d., 41.

⁸⁵⁹ *The Spectator*, 17 December 1842, cited Hayes *Hutt Valley* p. 6. Halswell replies: (Wai 145 #A31, 103): In the case of the Porirua natives, also referred to, I have written to the Government at Auckland, explaining that these natives have no claim whatever to the valley of the Hutt, and would be considered intruders by the natives here, even if the land had not been sold to the Company; I have reason to believe that the Porirua natives (about 30 in number), alluded to in the correspondence enclosed, were sent over by Rangiaiaata, for the purpose of producing mischief; this man is very badly disposed, and is not to be trusted.” (Hayes, *Hutt Valley*, 6).

⁸⁶⁰ Shortland to Spain, 26 March 1842, IA 4/253. See discussion in Waitangi Tribunal, *Te Whanganui a Tara*, 101-2.

⁸⁶¹ See Jellicoe, *NZ Co’s Native Reserves*. Jellicoe’s list is based on Mackay, *Compendium*. vol 2, 265, which Jellicoe checked against the original plans in the Head Office of the Department of Lands and Survey.

Districts. On this occasion it seems that “4,200 acres were set aside as reserves in 100-acre lots in accordance with the first prospectus”.⁸⁶² On 4 June 1842 Halswell reports that he was “enabled to select for the Natives, according to the order of choice, a portion of the reserved lots”.⁸⁶³ Three hundred acres are allocated at Porirua, 200 at Ohariu, 300 on the Manawatu and 3,400 acres in the Horowhenua area.

(13 April) Te Rangihaeata demolishes a number of houses being built by Company settlers at Porirua.

(15 May). Commissioner Spain begins his enquiries into New Zealand Company transactions at Wellington. Once it dawns on Wakefield that Spain intends to investigate the validity of the NZ Co purchases, he begins a campaign of obstruction.

(June) Halswell is temporarily replaced as Commissioner, when as a result of an arrangement made between the British government and the New Zealand Company the control of the reserves (at Wellington only?) is transferred to the Governor, the Bishop of New Zealand, and the Chief Justice. It is clear from this that the reserves were understood to be **trust** lands, with Maori to receive an income from the reserves but for the reserves to be managed on their behalf by others. A clear narrative of the arrangements relating to the vesting of the legal title to the reserves in 1842 is in Jellicoe (p 31-2):

Mr Halswell retained the office of Commissioner of Native Reserves until June, 1842, when he was rather unceremoniously superseded, and by an arrangement made between the Home Government and the Company the control of the reserves passed to the Governor, the Bishop of New Zealand (Bishop G.A. Selwyn), and the Chief Justice (Sir William Martin), the latter two gentlemen having been appointed to the colony by Lord John Russell. The Governor soon after declined to act himself, and decided to submit to the Legislative Council a Bill for vesting the reserve in three trustees – viz., the Chief Justice, the Bishop, and the Chief Protector of Aborigines. This Bill was never actually introduced, as Governor Hobson died in September, 1842, but in July, prior to his death, Mr Halswell was informed of the arrangement and asked to resign the office of Commissioner. Besides the revenue from the reserves, it was intended that the Bishop and his colleagues should have control of a portion of the moneys derived from the sales of land acquired from the aborigines, the funds accruing from both sources to be expended in the establishment of schools for the education of youth among the aborigines, and in furtherance of such other measures as might be most conducive to the spiritual care of the Native race and to their advancement in the scale of social and political existence. The principle of setting apart a percentage on the produce of land-sales annually does not appear to have been adhered to, and the original instructions regarding this proposal were ultimately lost sight of during Governor Fitzroy’s administration.

The Chief Justice soon resigned the office of trustee, as he found the duties incompatible with his official position, for in the

⁸⁶² See Jellicoe, *NZ Co’s Native Reserves*, 29.

⁸⁶³ Halswell to Wakefield, 4 June 1842, cited Jellicoe op.cit., 29.

event of the trustees being engaged in any lawsuit he would be both Judge and party in the suit at the same time. Mr Halswell was subsequently appointed to the sole charge of the reserves at Wellington, as agent of the trust vested in the Bishop and the Chief Protector of Aborigines; and Mr A. H. Thompson, Police Magistrate, was appointed to fill a similar office in Nelson.

The country lands in the Wellington district (comprising Wanganui, Manawatu and Porirua) and the whole of reserves at New Plymouth were placed in the hands of Mr. Henry St. Hill as agent of the trustees.

(July) By this time Te Kaeaea and his people have joined the “Porirua” occupants in the Hutt and have cleared “nearly a mile along the banks”.⁸⁶⁴

(20 July) Halswell, Spain, Clarke and Swainson meet with Te Kaeaea to discuss his intentions.⁸⁶⁵

(21 August) The 50-acre suburban blocks at Nelson finally are available for selection. Thompson selects 19 sections at Moutere and 81 at Motueka for Maori.⁸⁶⁶

(August) There is a major shift in direction with the investigations at Wellington.⁸⁶⁷

Almost all Maori witnesses disputed the company's claim, and by August 1842, it was clear that Spain would recommend a grant for only a portion of the company's claim to Port Nicholson, forcing Wakefield into a more conciliatory position.... Wakefield now offered to compensate those who had missed out in the initial payment, suggesting that the amount be decided by Spain and Halswell, the company's Protector of Aborigines.

⁸⁶⁴ E.J. Wakefield, *Adventure in New Zealand*, vol ii, 319; *The Spectator*, 17 December 1842, cited Hayes *Hutt Valley* p. 6.

⁸⁶⁵ **AGREEMENT BETWEEN HALSWELL, SPAIN ET AL AND TARINGA KURI JULY 1842**

Hayes, *Hutt Valley*, pp 6-7:

It appears that around 20 July 1842, Halswell, Spain, Clarke, Swainson and others met with Te Kaeaea to discuss his intentions. According to Halswell, Te Kaeaea stated (Wai 145Doc#A31, p. 187):

that he only wished to take off one crop from the land, and then to leave the place, but nevertheless he was ready to quit at once, and which he ultimately agreed to do; but after this was settled, Mr Swainson took me on one side, and said that he was willing, and indeed desirous that E Kuri should remain for one, or even two years on the section, provided, in burning off the wood, he took care not to injure any crops that might be on the ground, and not cut down such trees as he, Mr Swainson, would mark to be reserved. This proposition was acceded to by E Kuri, and this was the arrangement finally made; it was thoroughly understood by both parties, and I left the place, considering Mr Swainson was perfectly satisfied, and that I should hear no more of the matter.

Swainson had a different recollection of this event, and claimed that the proposal to allow Taringa Kuri to remain on certain conditions had not come from him. He claimed that Taringa [p.7] Kuri soon breached the terms of this agreement, and also breached a further agreement made in the presence of Police Magistrate (Murphy) and Colonel Wakefield. Swainson also wrote of another agreement, brokered by Bishop Selwyn, that Taringa Kuri would leave the land and occupy a native reserve, which had likewise been ignored.

⁸⁶⁶ Jellicoe, *NZ Co's Native Reserves*, 37.

⁸⁶⁷ Anderson and Pickens, *Wellington District*, 28.

However it proves impossible to agree on a figure for compensation.

(September) Hobson dies and the government is taken over by the former Colonial Secretary, Willoughby Shortland.

1843

(10 January) After an enquiry by the police magistrate at Wellington (Murphy) Richard Cook is ordered to stand trial at Wellington for the murder of Rangihaua Kuika at Cloudy Bay; Kuika is related to Te Rangihaeata.

(January) Further allocation of sections at Porirua (there had been an earlier allocation in mid-1842).⁸⁶⁸

(January) Commissioner Spain commences his arbitration process.⁸⁶⁹

(11 January) Charles Pennington makes a further award of 180,664 acres on the basis of the November 1840 agreement.

(March-April) Spain, in company with Clarke (Protector) and Meurant (interpreter) travels north and conducts enquiries at Porirua, Waikanae, Otaki, Horowhenua, Manawatu and Wanganui.

(April 15) Captain Wakefield arranges contracts for the Wairau surveys.

(22 April) Survey parties (led by John Cotterell and John Barnicoat) arrive at Ocean Bay, Port Underwood. Barnicoat and Cotterell meet Nohorua at Ironside's house. When Nohorua hears that the Company plans to survey the Wairau he becomes very angry and tells Barnicoat that the Company cannot have it.

(26 April) Te Rauparaha and Te Rangihaeata give their evidence relating to the New Zealand Company's Kapiti deed of 18 October 1839. Te Rauparaha states that the 1839 transaction applied, in his understanding, only to Te Taitapu.⁸⁷⁰ Te Rangihaeata also gives evidence and states, for his part, that the transaction related to Wakatu (Nelson). In his journal Sub-Protector Edward Meurant noted that "Mr Spain opened his Court at the Pa, and examined Te Rauparaha and Rangiaiaata, on the Company's claim at Blind Bay on the Middle Island. They deny having sold the quantity claimed by the Company".⁸⁷¹ Spain later notes that he had been "particular in my inquiries of Rauparaha as to what lands he had sold" and that "he would not admit that he had ever sold or intended to sell any other place than "Taitapu"...".⁸⁷²

⁸⁶⁸ Duncan Moore, *Questions Regarding the Port Nicholson Purchase: Surplus Lands, Purchase Consideration and Title to Maori Reserves*, Wai 145 Doc#17, 40.

⁸⁶⁹ Moore, *Questions Regarding the Port Nicholson Purchase*, Wai 154 Doc#17, p 16. Note that by this time sections at Porirua had been selected and surveyed and Native Reserves already allocated (see the map at *ibid* p 17 ("Areas selected and surveyed in 1841-42, and under arbitration in 1843-44").

⁸⁷⁰ 26 April 1843, Evidence of Te Rauparaha, OLC 1/907.

⁸⁷¹ Edward Meurant, *Diary and Letters 1842-7*, ATL MS 1635, cited Walzl *Ngati Rarua 1839-60*, 109.

⁸⁷² In Spain Report on Nelson, 31 March 1845, GBPP 1845-7, IUP edition, Vol. 5, 43-52, cited Walzl *Ngati Rarua 1839-60*, 106. As to Te Rangihaeata and the others:

Rangiaeata's [sic] testimony was equally positive as to the sale of no other place than "Wakatu", the native name of the district in the immediate vicinity of and including Nelson Haven. I subsequently examined Hiko and Tutahanga, also signing parties to the Kapiti deed,

(27 April) Rev. Samuel Ironside returns home after spending some days in Port Nicholson as interpreter at the trial of Richard Cook for the murder of Kuika at Cloudy Bay.

(12 May) Te Rauparaha and Te Rangihaeata arrive at Spain's court at Porirua and raise the matter of the Wairau surveys.

(13 May) Spain answers that as he has advertised his court sittings at Wellington he cannot go to the Wairau for four weeks. The chiefs say they will meet Spain at the Wairau.

(23 May) Spain re-opens the inquiry into the Port Nicholson claims. But once again there is impasse, due to Wakefield's insistence that pas, cultivations and urupa were to be included within the lands for compensation was paid (Spain's stance was that such areas could not be taken without consent).

(24 May) *The Spectator* reports an attack on "some half dozen industrious Scotch settlers, who have made a joint purchase of a country section up the Hutt. Those responsible a said to be "part of Rangihaeata's tribe"; they "will not suffer any white people to settle on it until they get paid".⁸⁷³

(28 May) Te Rauparaha and Te Rangihaeata are taken across Cook Strait in Joseph Thoms' vessel *The Three Brothers*.

(29 May) *The Three Brothers* arrives at Te Awaiti, where it picks up two of its whaleboats and sails on to Cloudy Bay. Seth Howland disembarks Ngati Toa in the whaleboats. *The Three Brothers* sails on to Wellington; one of the boats is taken back to Te Awaiti and Ngati Toa retain the other one. The arrival of the chiefs at Cloudy Bay is noted by the Rev. Samuel Ironside.

(1 June) Te Rauparaha and about 100 followers arrive at the Wairau. Their arrival is noted by both Cotterell and Barnicoat. Barnicoat counts 8 canoes and 1 whaleboat.

(2 June) Cotterell's hut etc. is burnt by Te Rauparaha's and Te Rangihaeata's party and he and his men are escorted downriver. They are not, however, harmed and nor is their property damaged.

(3 June) Ngati Toa find Barnicoat and his survey party. Barnicoat and the chiefs spend an amicable day together.

- Tuckett arrives from Nelson. He meets Cotterell and sends him back to Nelson to inform the magistrates as to what has happened.

- Tuckett finds Parkinson and warns him to expect a visit from the chiefs.

(4 June) Barnicoat's huts etc. are burnt and he and his men are taken downriver.

- Parkinson encounters a Ngati Toa party at his camp. Parkinson flees in the middle of the night.

and their evidence, though not so reluctantly given as the other two, was of a very similar nature, and confirmatory of their statements.

⁸⁷³

The Spectator, 24 May 1843, cited Hayes, *Hutt Valley*, 8.

(5 June) Barnicoat and the chiefs first learn of Tuckett's arrival; this seems to make them very angry.

- Parkinson returns to his camp in the morning to find his men gone. He later finds them and Tuckett at Tuckett's camp.

(6 June) Barnicoat is taken down to the river mouth; the chiefs leave in search of Tuckett.

(7 June) Parkinson, Tuckett, and the chiefs come back downriver.

(10 June) *The Spectator* reports another incident in the Hutt Valley.⁸⁷⁴

(11 June) Cotterell arrives at Nelson.

- Tuckett leaves the Wairau with some of the men in the NZ Co. boat

(12 June) Parkinson leaves for Port Underwood

- The chiefs and their people go upriver to begin planting.

- Warrants are issued in Nelson for the arrest of the Ngati Toa chiefs Te - Rauparaha and Te Rangihaeata on charges of arson.

(13 June) The government brig, the *Victoria*, leaves Nelson on its way to the Wairau. On board are Wakefield, Cotterell, Thompson etc. The plan is to arrest the two chiefs and return with them to Nelson.

(15 June) The expedition from Nelson lands at the Wairau.

(16 June) After spending the night at the abandoned Ngati Toa pa at the mouth of the Wairau river the Nelson party moves up the Wairau Valley searching for Te Rauparaha and Te Rangihaeata. On the way upriver they meet Rawiri Puaha and his group of Christian Ngati Toa. Rawiri Puaha agrees to lead the Nelson party to Te Rauparaha but then escapes.

(17 June) Battle of the Wairau. The settler party attempts to arrest Te Rauparaha and Te Rangihaeata. Firing breaks out and the Pakeha are routed. Te Rangihaeata's wife (mother of Wi Naera Pomare, chief of Ngati Mutunga) is killed by a stray bullet. Te Rangihaeata exacts utu on the captives. Tuckett and Barnicoat and a number of others manage to escape.

(30 June) A meeting is held at Nelson to raise a militia.

(30 June-3 July). Meetings between Spain, Clarke, Meurant and Te Rauparaha at Waikanae and Otaki. Te Rauparaha insists that he was "not willing to relinquish his claim to the upper part of the Hutt, unless fairly compensated"; that "he had heard that Colonel Wakefield had purchased it from Puni, the chief of Pitone, who had no title to it"; that "for many years he had made his canoes there; since then he had cultivated it, and that was his claim".⁸⁷⁵

⁸⁷⁴ *The Spectator*, 10 June 1843, cited Hayes, *Hutt Valley*, 9: "The Porirua Maories have again become restive, and proceeded to acts of hostility on the Hutt. On Friday, they tore down a house on the banks of the river, belonging to a person named Storey, throwing the material into the water. As soon as it was known in town, several persons went over, and amongst the number was our worthy and highly respected town clerk. On that gentleman expostulating with the Natives on their conduct, they became furious, and maltreated him."

⁸⁷⁵ **SPAIN'S NEGOTIATIONS WITH TE RAUPARAHA, JULY 1843**

(September) More Maori people, including women and children, move into the Hutt Valley, seemingly by direction of Te Rauparaha and Te Rangihaeata.⁸⁷⁶

(12 October) Nelson magistrates issue a warrant for the arrest of Te Rauparaha and Te Rangihaeata for murder.

(December) Fitzroy reaches Auckland. He has already learned of the Wairau massacre from Gipps.

1844

(20 January) In order to resolve the impasse over the Port Nicholson purchase, there is a key meeting between Fitzroy, Spain, Clarke, and Wakefield at Major Richmond's house.⁸⁷⁷ No Maori are present.

(January?) Following further discussions with Wakefield William Clarke jr. fixes the additional compensation to be paid at £1500.⁸⁷⁸

(27 January) A settler named Mabey is driven off his property in the Hutt Valley by a group of Ngati Kahungunu, “a very ferocious and ill-looking set, and though not over numerous, on any case of emergency are reinforced by some of Rauparaha and Rangihaeata’s mob”.⁸⁷⁹

Hayes, *Hutt Valley*, 10-11. See especially Clarke’s record of Te Rauparaha’s views (cited above), Wai 145 Doc#A31, 10-18 (letter of 16 August 1843).

⁸⁷⁶ Clarke to Clarke sr., quoted by Forsaith, Wai 145 Doc#C1 (a), 47, cited Hayes, *Hutt Valley*, 11: “A large number of natives have come down to the Hutt (about 130 including men women & children) within the last three months. Rauparaha and Rangihaita I believe will give up their claims for four horses and a cask of Tobacco, and withdraw all these people.

⁸⁷⁷ See Waitangi Tribunal, *Te Whanganui a Tara*, 125-126. Notes of this very important conference are kept by Thomas Forsaith (‘Minutes of the Conference held at Major Richmond’s, on Monday, 29 January 1844’, GBPP vol 5, 26-28.

⁸⁷⁸ In a report sent to his father in June Clarke wrote (Clarke jr to Clarke sr, 26 June 1844, BPPP, vol 4, 464-465, cited Waitangi Tribunal, *Te Whanganui a Tara*, 127):

On the arrival of his Excellency the Governor at Wellington, last January, I was directed by him to resume negotiations with Colonel Wakefield, which had been for some time suspended, and we finally concurred in awardin the sum of 1500/ to the natives, as compensation for their unsatisfied claims in the surveyed district of Port Nicholson and the vicinity. Having previously obtained the general consent of the natives to accept of a fair award, I based my estimate of it upon what I deemed to have been the marketable value of the land at the time when Colonel Wakefield commenced to treat about the sale of it, modified by the consideration some of them had already received, for dividing the sum I have named. I carefully considered the situation, quality and extent of the land claimed by each tribe, as well as the comparative strength of the claims they respectively advanced.

⁸⁷⁹ *The Spectator*, 27 January 1844, cited Hayes, *Hutt Valley*, 11. Mabey was driven away “by a party of Ngatikahuna’s who inhabit a pah near Mr Mason’s farm...The natives are described as a very ferocious and ill-looking set, and though not over numerous, on any case of emergency are reinforced by some of Rauparaha and Rangihaeata’s mob, besides all the Maories from up and down the Straits. They also received an accession of numbers from Wairarapa. Mr Clarke, the Sub-Protector, went up to the spot on receiving information, accompanied by a native, but the latter refused to go into the pah, alleging that his countrymen would tomahawk him. Mr Clarke then proceeded by himself...and we are given to understand that they soon got into a rage with the Sub-Protector for his trouble, and threatened him by word and gesture, which soon obliged him to retire...it is reported that the Natives have determined to settle in large numbers in the Upper Hutt, and clear a large quantity of land there.

(29 January) Clarke writes to Wakefield requesting a certified plan and statement showing the extent of the land the Company had now surveyed or given out for selection together with the extent of the Maori reserves within the limits of the Port Nicholson deed.⁸⁸⁰

(3 February) Te Rauparaha and Te Rangihaeata write to Spain on the subject of distribution of the compensation payments, requesting Clarke et al to “desist also from carrying your payment to men who have nothing to do with it - but bring it straight to myself and Rangiaiaata”.⁸⁸¹

(8 February) Wakefield agrees to pay the additional £1500.

(12 February) Fitzroy meets Ngati Toa at Waikanae in a great korero to discuss the Wairau incident. Present are about 500 chiefs and people of Ngati Toa, Fitzroy and his naval officers, and Octavius Hadfield, CMS missionary at Otaki. Fitzroy announces his decision that no steps will be taken against Ngati Toa. The Wakefield family and other leading members of the New Zealand Company, including their cousin Francis Dillon Bell, are incensed and are determined to get even with Fitzroy.⁸⁸² There are apparently - after the main meeting is over - some discussions involving Fitzroy, Forsaith, Clarke and Te Rauparaha over the Hutt Valley issue.⁸⁸³ At this meeting Te Rauparaha says that “Pomare and I should receive the payment for Port Nicholson”.⁸⁸⁴

(23 February) Special sitting of the Court of Claims at Te Aro, at which Governor Fitzroy and William Wakefield are both present. The purpose is to advise Maori of the amount of additional compensation (£1500) that had been agreed on. Of this £300 has been set aside for the people at Te Aro. Spain tells the people there:

I am now come come back, to redeem my word, accompanied by the Governor, who has been sent by the Queen to be Ruler and Governor of New Zealand. He has examined and considered my proceedings about the Land, and will tell you the decision. The words of the

⁸⁸⁰ Clarke

⁸⁸¹ Te Rauparaha and Te Rangihaeata to Spain, 3 Feb 1844, original in Maori, citing ET on OLC 910-911.

⁸⁸² Evison, *Te Wai Pounamu*, 198-9.

⁸⁸³ **DISCUSSIONS OF FITZROY AND OTHERS WITH TE RAUPARAHA RE THE HUTT VALLEY, WAIKANAЕ, FEB 1844.**

Hayes, *Hutt Valley*, 12:

In February 1844 the new Governor, Fitzroy, accompanied by Spain, Forsaith, Clarke and others went to Waikanae. At a meeting with Ngati Toa on the 12th, Fitzroy inquired into the circumstances of the Wairau massacre and announced that he would take no steps against those who had participated in the killing. Forsaith later intimated that he would take no steps against those who had participated in the killing. Forsaith later intimated that a settlement of the Hutt issue had been discussed and that “Rauparaha had expressed no unwillingness to such an arrangement when it was proposed by Mr Clarke, who remained at Waikanae after the meeting which took place on the occasion of His Excellency’s visit...for the purpose of making these preliminary arrangements.” [Forsaith to Chief Protector of Aborigines, 8 April 1844, Wai 145 Doc# C1(a), p. 113. Spain wrote on 1 March 1844 that “After the late meeting between the Governor and the natives at Waikanae, Rauparaha begged me to name an early day for meeting him, and that I told him I would do so as soon as possible.” [Spain to George Clarke Junior, 1 March 1844, Wai 145 Doc#A32, p. 90.]

⁸⁸⁴ Te Rauparaha to Spain, 27 March 1844, OLC 910-911, copy in Hayes, *Hutt Valley*, 138.

Governor are Sacred, and his decision which you will now hear is final.

There is considerable opposition but on **26 February** the Te Aro people capitulate, accept their £300, and sign the deed of release. The Kumutoto, Pipitea, and Tiakiwai people follow suit.

(27 February) Fitzroy decides that the Company can buy 150,000 acres from Maori in the South Island for the New Edinburgh settlement. Provided Maori were in agreement Crown pre-emption would be waived over the the land. J.J. Symonds would supervise the purchase on behalf of Superintendent Richmond of the "Southern Division".⁸⁸⁵ Colonel Wakefield then invites Frederick Tuckett, the surveyor at Nelson, to select and purchase a site for "New Edinburgh".

(29 February) Clarke writes to Te Rauparaha on 29 February advising him that some (but not all) of the compensation money will be paid to him: "it is quite right friends that I have given the payment to the Natives of Port Nicholson - and, Rauparaha, remember well my words that you heard from me - part of the payment for the Natives of Port Nicholson I shall give to you, and part to the Natives here". Clarke states also "do you listen to Pomare. He will tell you particulars".⁸⁸⁶

(8 March) Spain meets Te Rauparaha, Te Rangihaeata, Te Puaha and others in an unsuccessful attempt to persuade Ngati Toa to accept their share of the £1500 compensation money. The arrangement founders over Spain's insistence that the boundary of the Wellington block include the Hutt Valley. There is a conflict of evidence as to what had been earlier agreed at the February meeting in Waikanae. Te Rauparaha says that he he "understood I was to have a payment for Port Nicholson and I am now ready to receive it...*I had no idea you meant to include the Hutt.*" Clarke says "that he had spoken of his claim *under the general term of Port Nicholson*" but that the Hutt was included; Te Rauparaha says "*I consider Port Nicholson to mean all the land seaward of Rotokakahi, but that beyond Rotokakahi would be retained by the natives.*" Spain says that the boundaries were fixed and could not be changed. Te Rauparaha also says that a boy who was present "is the real chief of the place" (the Hutt Valley).⁸⁸⁷

(mid March) Taringa Kuri, who was at the meeting of 8 March, cuts the boundary at Rotokakahi at Te Rauparaha's instructions. Taringa Kuri tells Spain that he was "cutting a line according to the directions of Rauparaha to divide between the lands of the Europeans and our own".⁸⁸⁸

(22 March) Spain is at Waikanae, where he meets Te Rangihaeata and Octavius Hadfield. Hadfield tells Spain that Te Rauparaha and Te Rangihaeata were "very jealous" because "Mr Clarke had paid the Port

⁸⁸⁵ Evison, *Te Wai Pounamu*, 199-200.

⁸⁸⁶ Clarke to Te Rauparaha, 29 February 1844, OLC 910-911, Cited R.P. Boast *Ngati Toa in the Wellington Region*, 133.

⁸⁸⁷ The discussions are recorded on OLC 910-911, [Re Conference with Te Rauparaha], covered in R.P. Boast, *Ngati Toa in the Wellington region*, 132-136; Hayes, *Hutt Valley*, 12-14.

⁸⁸⁸ Forsaith to Superintendent, Southern Division, 21 March 1844, cited R.P. Boast, *Ngati Toa in the Wellington Region*, 136-7.

Nicholson natives before them, and expressed great dissatisfaction at the amount".⁸⁸⁹

(23 March) Spain meets Te Rauparaha at Otaki; things are very strained. Spain gives to Te Rauparaha a letter remonstrating with him about his instructions to Taringa Kuri to cut the boundary line at Rotokakahi.⁸⁹⁰

(27 March) Te Rauparaha replies to Spain's remonstrance.⁸⁹¹ "Do not suppose it is I who withhold the land; it is not I but Rangihaeata and Karaea (Taringa Kuri) who are withholding the Hutt". Te Rauparaha states that at the February meeting with Fitzroy "we assembled in the evening; I rose up and advised Rangihaeata to give up the Hutt, but Rangihaeata negatived my word, What can I do?" Te Rauparaha says "I have told no falsehood, on the contrary, you two confounded our negotiations, giving the larger payment to Ngatiawa. I indeed said that Pomare and I should receive the payment for Port Nicholson, and you two reduced the payment for Rangihaeata, the man to whom the land belongs, besides your mixing up of the payment of the Hutt for that of Port Nicholson. It was said, when you have given us the payment of Port Nicholson, and that is settled, we will negotiate about the Hutt."

(12 June) Spain upholds the NZ Co's Taranaki purchase and grants the company 60,000 acres in Taranaki.⁸⁹² He rejects the Company's Kapiti deed and declines to recommend that a Crown grant be issued for any land at Porirua.

(16 July) Native Exemption Ordinance.

(19-24 August) Spain conducts a hearing at Nelson, following which deeds of releases are drawn up and signed for the districts of Motueka and "Whakatu, or Whakapuaka".⁸⁹³ There are three releases (a) the Motueka Release, "signed by the Natives of Motueka", relinquishing claims to Whakatu, Waimea, Moutere, Motueka, Riwaka, Taitapu, but excepting Pas, Cultivations and Burial Places; (b) the Whakapuaka Release, "signed by the Natives of Whakapuaka", relinquishing claims as for (a) with a similar exception for pas etc.; and (c) a deed of release "signed by the Ngatiawa Natives" (same effect).⁸⁹⁴

⁸⁸⁹ Spain to Fitzroy, 13 April 1844, Wai 145 Doc#A32, Hayes *Hutt Valley* 16.

⁸⁹⁰ Spain to Fitzroy, Wai 45 Doc#A32, cited Hayes, *Hutt Valley* 16. Spain and Hadfield find Te Rauparaha "on the bank of the [Otaki] river, evidently waiting for us...Mr Hadfield observed to me, that when we arrived, Rauparaha's face appeared a little flushed; and from his manner he thought it likely that he had anticipated I had come with some hostile or unpleasant message to him, because he had refused to take the money at Porirua...We waited until six p.m when as he had not made his appearance, and as Mr Hadfield then had an evening service at the church, where it was probable Rauparaha would attend, I determined to go, in order to give him the chance of speaking to me after the service. When we left the church, Rauparaha called Mr Hadfield to him, and after speaking upon some indifferent subjects, observed "I told Taringa Kuri to settle all about the land, and to do what you and Mr Spain decided." He then dropped the subject and evidently wished to avoid entering further into it."

⁸⁹¹ Te Rauparaha to Spain, 27 March 1844, OLC 910-911, cited Boast, *Ngati Toa in the Wellington Region* 138; Hayes, *Hutt Valley*, 16-17.

⁸⁹² Sinclair, *Origins*, 113; 1860 AJHR E-2, pp 6-9, Spain-Fitzroy 12 June 1844.

⁸⁹³ Mackay, I, 60-62.

⁸⁹⁴ The releases are in Mackay, I, 67-8. They are dated 14 August 1844.

(September) The survey of the external boundary of the Port Nicholson block is finally completed. “A notable feature of the plan was the extension of the boundary to the southwest coast”.⁸⁹⁵

(November) Fitzroy sets aside Spain's Taranaki award.⁸⁹⁶ Instead he purchases an area around New Plymouth and waives Crown pre-emption within the 60,000 acre area of the original NZ Co transaction.

(4-6 November) Fitzroy meets Te Rauparaha, Te Rangihaeata, Matene Te Whiwhi and Rawiri Puaha at Waikanae to settle the Hutt issue.⁸⁹⁷ Fitzroy arrives at Waikanae on 4 November and meets both Hadfield and Te Rauparaha. On 4 November Hamilton, Fitzroy's secretary, records that they “saw Mr Hadfield and Rauparaha - very hard up for money as report says - Hutt business may probably be settled...a person named Fisher has been doing a great deal of harm along this coast.”⁸⁹⁸ The following day £400 in cash is brought ashore: Te Rauparaha and Te Rangihaeata say “we [the government] might do what we like with the Hutt” but decline to take any money. Rawiri and Matene are very keen to get the matter settled. The following day Fitzroy goes ashore again, but once again Te Rauparaha and Te Rangihaeata will not take any money until they can do so when Rewa (Reretawhangawhanga) will not be in a position to know about it, but promise to recall Taringa Kuri from the Hutt Valley. Fitzroy leaves under the impression that the Hutt question has been settled. But there does seem to have been a lack of clarity as to the crops being grown in the valley: Clarke advises Hamilton (Fitzroy's secretary) that “it may be necessary to allow them to remain until they can take up their crops”.⁸⁹⁹

(12 November) A deed is drawn up by Clarke and signed by Te Rauparaha purportedly pays £400 to Rangihaeata and Te Rauparaha as compensation for their interests in the Hutt Valley.⁹⁰⁰ In fact Te Rangihaeata did not sign the document and did not agree to accept any payment (he agreed to accept compensation for Heretaunga only in or around mid-1845). The deed states:

We two consent to surrender Heretaunga to the Governor of New Zealand on behalf of the N Z Co. We have received £400 in payment. Hence our names are written below, on this day, the 12th November [1844].

Na Te Rauparaha X his mark.

Na Te Rangihaeata X his mark.⁹⁰¹

⁸⁹⁵ Waitangi Tribunal, *Te Whanganui a Tara*, 181.

⁸⁹⁶ See Sinclair, *Origins*, 113-4.

⁸⁹⁷ See Hayes, *Hutt Valley*, 28-32.

⁸⁹⁸ J W Hamilton, Memorandum, 4 November 1844, (ATL MS 2302), cited Hayes, *Hutt Valley*

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⁸⁹⁹ Clarke to Hamilton, #C1(g). cited Hayes, *Hutt Valley*, 30.

⁹⁰⁰ Turton's Deeds, p 98 (Wellington, No. 3)

⁹⁰¹ But in fact Te Rangihaeata did not sign the document. Wards states that “Te Rangihaeata's signature was in fact that of his nephew, who signed in the hope that his doughty uncle would eventually be reconciled to the alienation of the Hutt Valley” (Wards, *Shadow*, 225). Ballara writes that “Te Rangihaeata's name was forged on the deed of sale by his nephew Matene Te Whiwhi in a misguided attempt to speed settlement” (Ballara, “Te Rangihaeata, *DNZB*, vol 1, 490). The interpretation of this document can be found in the Waitangi Tribunal's *Te Whanganui a Tara Report*, 200-203 and agreed with the criticisms made of it by counsel for Ngati Toa. The Tribunal remarked that the document “is surprisingly sparse and informal”; that “it is not a deed but is better characterised as a receipt”, giving “every indication of having been drawn up in haste”:

(late November) Clarke and Richmond find that Te Kaeaea (Taringa Kuri) and his people in the Hutt are very angry and unwilling to leave, whatever had been agreed with Te Rauparaha and Te Rangihaeata.

(December) Lieut-Col McCleverty is appointed as a special assistant to the NZ Co to finalise land sales and surveys in the Cook Strait region.

(11 December) Richmond has a meeting with Te Rauparaha. Te Rauparaha and Richmond agree that the Hutt Maori should be allowed to stay only to harvest their current crops and should then leave within three months - i.e. by March 1845.⁹⁰²

(20 December) By this time Major Richmond has concluded that it will be necessary to use force to drive Maori out of the Hutt Valley.⁹⁰³

(28 December) Hutt Maori clear and burn off further land in preparation for planting potatoes: this is contrary to the understanding reached with Te Rauparaha on 11 December.⁹⁰⁴ By this time Kaparatehau is quite willing to openly defy Te Rauparaha; also there is now an obvious division between Te Rauparaha and Te Rangihaeata. Kaparatehau tells Forsaith that “as to Rauparaha ordering us off, and saying we are only slaves, we are highly indignant...and we shall pay no attention to him...he must come and drive us off...”⁹⁰⁵ Rangihaeata, moreover, had sent a message “to confirm them in their intention of remaining”.⁹⁰⁶

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(6 January) Forsaith visits the Hutt and finds local Maori busily planting. Te Rauparaha had tried to make them leave by placing a tapu on the valley, but this was unsuccessful.⁹⁰⁷

(6 January) Richmond writes to Fitzroy recommending the use of force in the Hutt Valley. He thinks that Te Rauparaha is insincere and that Te Rangihaeata is “abetting the natives in their illegal possession”.⁹⁰⁸

It was not in fact signed or marked by Te Rangihaeata (although this is claimed), while Mr Hayes says it is unclear whether Te Rauparaha signed the deed. The purported acknowledgment of the receipt of the £400 (or a part) by Te Rangihaeata is erroneous. It is well established that he declined to take any of the purchase money at that time and for many months thereafter. The money was received only by Te Rauparaha.

902 Hayes, *Hutt Valley*, 34.

903 Hayes, *Hutt Valley*, 35.

904 MA-W, 1/1, 77-9 (cited Hayes, *Hutt Valley*, 36).

905 Ibid.

906 Ibid.

907 Forsaith to Richmond, 7 January 1845, MA-W 1/1, 87; see Hayes *Hutt Valley* 39-40.

908 Richmond to Fitzroy, 6 Jan 1845, NM 10/2, 44-6.

(13 January) Major Richmond writes to Te Rauparaha⁹⁰⁹ and Te Rangihaeata.⁹¹⁰ He tells Te Rangihaeata that “my heart is dark on account of the word of the men of Heretaunga which I have heard, saying it was in consequence of your work that they persist in remaining there. Is this true? For what purpose did you join in the settlement of Heretaunga...Friend, I will not hastily believe this report because you are a Chief, and a Chief will not merely put his hand to take payment or make a promise, and afterwards deny what he has done. Friend, make it known to us that you act faithfully...”

(18 January) Hone Heke cuts down the Kororareka flagstaff for the second time. This leads directly to the outbreak of the northern war.

(6 February) Richmond writes to Fitzroy mentioning that he had offered one of the 100-acre Upper Hutt reserve but this had been declined; instead the Hutt Maori had urged that the valley be divided between Maori and Pakeha.⁹¹¹

(late Feb-early March) Te Rauparaha proposes as a compromise that land be set aside at Pakuratahi and at Wairaki for the benefit of the occupiers in the Hutt. This is rejected by Richmond on the basis that “those two places are within the Boundaries of the New Zealand Company’s Port Nicholson claim as recently laid down by the Surveyors according to the award of Mr Commissioner Spain”.⁹¹²

(mid March) Forsaith meets Te Rauparaha at Otaki and Rangihaeata at Porirua. The discussions are reported by Richmond to Governor Fitzroy on 19 March.⁹¹³ Forsaith, who is one of the Native Protectors, seems rather more optimistic than Major Richmond: Forsaith thinks that “Rauparaha is decidedly upon our side” and that “Rangihaeata hitherto the greatest obstacle is turning”.⁹¹⁴

(end of March) News of Hone Heke’s rebellion reaches Wellington. This causes an upsurge in tension and much settler anxiety that Maori are planning to attack them. A militia is formed at Wellington.⁹¹⁵ But Te Rauparaha writes

⁹⁰⁹ Richmond to Te Rauparaha, 13 January 1845, NM 10/2, 48, cited Hayes, *Hutt Valley*. 41. Richmond demands to know what Te Rauparaha intends to do about the Maori still defiantly in possession in the Hutt: “I was pleased at the word of your letter which said you would undertake the business of Heretaunga and send the Natives away. And I was also pleased with your word that I should not interfere. But they persist in their disobedience. They ridicule your tabooing the land and continue speaking disrespectfully of you and Thompson. When you took the payment from the Governor and agreed with me that they should go, that they should cease planting and that they should not molest the Europeans in clearing and cultivating their lands, we believed your words would be fulfilled as the words of a Chief. But, when is this to be? I have not seen any act by which you will reestablish your words, which have fallen to the ground - for the men on the Hutt are continuing their planting, and continue to prevent the Europeans from working. What will the Governor think when this news reaches him. That you have done nothing but take payment. Friend, be strong to fulfill your word, that it may be seen by all men - that you really intend the Natives to go, lest evil is the result of this matter and the blame be laid upon you.

⁹¹⁰ Richmond to Te Rangihaeata, 13 January 1845, NM 10/2, p. 52, cited Hayes, *Hutt Valley*, 41-

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⁹¹¹ Richmond to Fitzroy, 6 February 1845, NM 10/2, pp 55-58.

⁹¹² Richmond to Fitzroy, 1 March 1845, NM 10/2. 61-63, Hayes *Hutt Valley* 46.

⁹¹³ Richmond to Fitzroy, 19 March 1845, NM 10/2, 61-63, Hayes, *Hutt Valley* 47.

⁹¹⁴ Forsaith to McLean, 8 March 1845, ATL MS 32/277.

⁹¹⁵ Hayes, *Hutt Valley*, 48.

a letter to Richmond delivered by Tamihana and Matene in which he expresses his annoyance that Te Kaeaea and Kaparatehau are remaining at the Hutt and that settlers are moving in to the Wairau Valley.⁹¹⁶ It seems that news of Hone Heke's success has emboldened Te Rangihaeata to resist in the Hutt Valley; or at least Major Richmond thinks so: the Hutt Natives "readily obey the Instructions which Rangihieata [sic] sent them on hearing of Hone Heke's success, to the effect that they should *not now* remove from that Valley, and if attacked by the Europeans they might rely on *his* support".⁹¹⁷ At the same time Te Puni and the chiefs at Petone were becoming concerned that they themselves were at the risk of attack.⁹¹⁸

(31 March) Spain releases his report on the Port Nicholson claim. He recommends that the Company should get a grant at Port Nicholson, including the whole of the Hutt Valley (i.e. well beyond the line cut by Taringa Kuri).

(31 March) Spain's report on the New Zealand Company's Kapiti claim: This is rejected because of conflicting evidence, Spain's doubts as to Brook's reliability as an interpreter, the place of the negotiations, and Ngati Toa's active opposition to New Zealand Company settlers attempting to take up their sections at Porirua.

(31 March) Commissioner Spain reports on his investigation into the New Zealand Company's South Island claims.⁹¹⁹ He states that he is "not prepared to recommend that that the district of Wairau be included in the Crown Grant to be made to the New Zealand Company of the land in the Middle Island".⁹²⁰ He recommends that the Company be granted 151,000 acres in the South Island: 11,000 acres at Whakatu (Nelson); 38,000 acres on the Waimea Plains; 15,000 acres at Moutere; 42,000 acres at Motueka; and 45,000 acres at Massacre Bay (Golden Bay).

(20 April) There are rumours in Wellington that Hutt Maori plan to destroy the fort and bridge at Fort Richmond in the Hutt Valley.⁹²¹ The brig *Bee* which had arrived on 19 April with 50 soldiers on board takes them to the fort on the 21st, but there is no sign of an attack.

(24 April) Richard Taylor (CMS missionary at Wanganui) comes to Wellington to fetch his daughter. He meets the Hutt Valley Maori: "we had a long talk with them about abandoning the place to the pakehas - they proposed to stay on the ground reserved for natives, they said they did not wish to leave - that they did not wish to quarrel - that they did not like the Pakeha Pa filled with rat holes." (Taylor, *Diary*.)

(24-25 April): Forsaith attempts to negotiate a settlement with Ngati Rangatahi. He is authorised to offer an additional £100. But there is no agreement. Ngati Rangatahi ask if they can have all of the money immediately. Forsaith refuses this. They then ask if they can have time to take up and sell their crops but this is also declined: "they acceded so far as to

⁹¹⁶ Richmond to Te Rauparaha, April 1845, N/M 10/5, 145-46).

⁹¹⁷ Richmond to Fitzroy, 4 April 1845, NM 10/2, 66-70; Hayes *Hutt Valley* 50.

⁹¹⁸ Ibid.

⁹¹⁹ Mackay, I, 54-60.

⁹²⁰ Ibid, 58.

⁹²¹ Cole Diary, ATL MS 5360, cited Hayes *Hutt Valley* 51.

promise they would *all* go, but wanted the payment at once. This I absolutely refused. They then insisted on sufficient time to take up and disposed of their crops. This I also refused, on the ground of these crops having been planted in direct opposition to the Government, and to the orders of Te Rauparaha - the crops which were standing before that agreement being already gathered....”⁹²²

(30 April) Forsaith writes to Richmond; he is now pessimistic about the chances of the Hutt Valley Maori leaving, partly because they are prospering through their trade with the settlers: “the great obstacle to their immediate acquiescence in the terms I have offered, is the advantage they are deriving in traffic with the settlers, so long as their every wish can be gratified, and every necessary provided by the sale of their commodities, my arguments make but little impression.”⁹²³

(late April) Forsaith proposes a scheme by which the settlers will boycott Maori produce grown in the Hutt Valley as a way of making them leave; nothing comes of this.

(May) The British Government decides that in order to avoid further political embarrassment over New Zealand affairs it is essential to replace Fitzroy. The replacement is to be Captain George Grey, at this time Governor of South Australia. He 'was to have double Fitzroy's salary and three times the funds to run New Zealand'.⁹²⁴

(5 May) On his way home to Wanganui Richard Taylor meets Te Rauparaha at Otaki. “Rauparaha made a long speech after evening prayer and declared it to be his intention to go to Port Nicholson to make the Natives of the Hutt quit.”⁹²⁵ Taylor thought it “an interesting scene to behold Rauparaha surrounded by his tribe asking its permission to go to the Hutt, he is to be accompanied by a large number but the greater part will be left at Porirua, and he will proceed with a few to Wellington. I trust his visit will not be misunderstood.”

(12 May) Te Rauparaha arrives at Wellington on his way to the Hutt Valley. This is his first visit to the town. He stays in a tent on the Reverend Cole's property. Tamihana and his family are with him.⁹²⁶

(13 May) Te Rauparaha meets Major Richmond and Octavius Hadfield and is welcomed by the Port Nicholson chiefs.

(15 May) Te Rauparaha reaches Taringa Kuri's pa but does not enter it.

(23 May) The fourth of the Nelson "releases" is signed.⁹²⁷

(17 June) Charles Buller, a powerful parliamentary supporter of the New Zealand Company, moves in the House of Commons that the House will resolve itself into a Committee to consider the state of New Zealand and the

⁹²² Forsaith to Richmond, MA-W 1/1, pp 125-9, cited Hayes *Hutt Valley* 53.

⁹²³ Forsaith to Richmond, n.d., late April 1845, MA W 1/1, 133-34, cited Hayes *Hutt Valley* p.

⁹²⁴ Evison, *Te Wai Pounamu*, 223.

⁹²⁵ Taylor Journal, 5 May 1845, ATL MS 1987.

⁹²⁶ Cole Journal, 12 May 1845, ATL MS 5360-1, cited Hayes, *Hutt Valley*, p.

⁹²⁷ Mentioned by Judge Mackay at (1892) 3 Nelson MB 3.

case of the New Zealand Company. This leads to a three-day debate on New Zealand affairs during which the Colonial Office is placed under sustained attack.

(23 July) Te Rangihaeata changes his mind and agrees to accept payment for interests in the Hutt Valley. He also makes it clear that he never did sign or accept the offer of payment made earlier at Waikanae.⁹²⁸ He remains concerned about the interests and rights of Ngati Rangatahi in the Hutt Valley.

(29 July) Governor Fitzroy issues grants validating the New Zealand Company's Wellington and Nelson purchases. The Nelson grant is dated 29 July 1845 and follows Spain's award exactly, granting 151,000 acres of land to the Company.⁹²⁹ The grant excludes "all the pas, or burial-places, and grounds actually in cultivation by the Natives" and *also* "all the Native reserves marked up the plan hereon endorsed and coloured green - the entire quantity of land so reserved being one-tenth of the 151,000 acres hereby granted to the said Company". The Wellington grant amounts to 71,900 acres. Pa, urupa and cultivations *are excluded from the grant as well as* the Native reserves.⁹³⁰ The New Zealand Company is not in the least happy with this, and complains to W.E. Gladstone, Colonial Secretary, that the Company's understanding was that it was to have all of the land except the fixed "tenths" reserves.⁹³¹

(14 November) Arrival of Grey.

(18 December) The Colonial Secretary, Lord Stanley, appoints Major McCleverty of the 48th Regiment to assist the New Zealand Company in their selection of land etc.⁹³²

1846. February) Grey arrives at Wellington with a detachment of troops. One of his objectives is force Maori remaining in the Hutt Valley to leave.

⁹²⁸ See Waitangi Tribunal, *Te Whanganui a Tara*, 204, citing Kemp to Superintendent, 23 July 1845, NM8/1845/307.

⁹²⁹ For a copy of the grant, see Mackay, I, 68-9.

⁹³⁰ **FITZROY'S GRANTS OF JULY 1845**

Jellicoe, *The New Zealand Company's Native Reserves*, 50-51:

The issue of Crown grants by Governor Fitzroy in July, 1845, in exact accordance with Commissioner Spain's awards for Wellington and Nelson caused a stir in the Company's camp. Apart from the fact that the grants were for a much lesser area than that claimed by the Company, the deeds contained certain conditions and exceptions which were not acceptable to the Principal Agent, and he declined to uplift the documents until the matter could be referred to the Court of Directors in England (Colonel Wakefield to Secretary of Company, 8/5/45; App. 20th Rep.)

The Wellington deed provided for a grant of 71,900 acres, and reserved-

- (1) All the pas, burial-places, and grounds actually in cultivation by the Natives;
- (2) The Native reserves, comprising forty-one country sections of 100 acres each and 110 town acres;
- (3) Four portions of land granted to private claimants;
- (4) All the lands set apart as Government reserves for public purposes.

The Nelson deed granted 151,000 acres, with reservations of precisely the same character, with the exception that Native reserves were defined to be one-tenth of the area granted, and that in lieu of specific grants to particular individuals a clause was inserted excepting private claims "which have been or may be hereafter proved".

⁹³¹ Secretary of New Zealand Company to the Right Hon. W.E. Gladstone, 23/2/46: Great Britain - Papers relating to New Zealand, 1846 (as cited in Jellicoe, 51).

⁹³² See Stanley to Governor Grey, 18 December 1845, in Mackay, I, 70-71.

(24 February) Grey moves troops into the Hutt Valley.⁹³³ Taringa Kuri and Ngati Tama have left by this time but Ngati Rangatahi and Kaporatehau have remained, and resisted settlers attempting to return to their homes. The same day Richard Taylor goes to see Ngati Rangatahi and Kaporatehau and persuades them to leave the Hutt.⁹³⁴ As they leave their houses and cultivations are pillaged by the settlers.

(28 February) The NZ Co. complains to the Secretary of State for the Colonies (W.E. Gladstone) about Fitzroy's Wellington and Nelson grants.⁹³⁵ Essentially the Company believed that Fitzroy was wrong to exclude pas, cultivations etc. *and* the reserves; moreover as the "tenths" scheme involved a reservation of one acre set aside for every ten offered for sale, one-eleventh, not one tenth should have been set aside.

(Feb-early March) Maori in retaliation plunder settler homes in the Hutt Valley.

(3 March) Grey proclaims martial law in the whole of the Wellington District.⁹³⁶ The area so proclaimed included the whole area south of a line drawn from Wainui (Paraparaumu) to Castlepoint. The legality of this proclamation is queried by Hanson, the Crown Prosecutor.

(21 March) Gladstone forwards the Company's complaints about the proposed Wellington and Nelson grants to Governor Grey, basically giving Grey a free hand to take such measures as he thinks fit should he accept the Company's view of the situation.⁹³⁷

(16 May) Battle of Boulcott Farm. British troops of 58th regiment commanded by Lieutenant G H Page are attacked by Maori forces at Boulcott's farm in the Hutt Valley. The attackers are led by Topine Te Mamaku of Ngati-Haua-te-Rangi. It is far from clear whether Te Rangihaeata was present. Following the battle (which is inconclusive) military reinforcements are sent to the valley and the Wellington magistrates decide to accept the offer of military assistance from Te Puni and Wi Tako.

(June) Peel's Tory government is defeated over the repeal of the Corn Laws and the Whigs take office. The new Prime Minister is Lord John Russell and Grey replaces Stanley at the Colonial Office. The new government is much more friendly to the New Zealand Company than the former regime.

(23 July) Te Rauparaha is captured by Grey at his village of Taupo at Paremata and is taken on board *HMS Driver* and taken round to Wellington to be placed on *HMS Calliope*. Two other senior Ngati Toa rangatira are

⁹³³ Crawford Diaries, ATL MS 1001:5, 24 February 1846.

⁹³⁴ Taylor diary, typescript, ATL qMS 1987, p 351 of MS.

⁹³⁵ See T C Harrington to Gladstone, 28 Feb 1846, Mackay I, 70-71.

⁹³⁶ Cowan, *NZ Wars*, 1, 102. The text of Grey's proclamation is printed in the *New Zealand Spectator*, 7 March 1846.

⁹³⁷ Gladstone to Grey, 21 March 1846, Mackay I, 69: "I have to request that you will inquire and ascertain whether the reports which have been made by the Company's Agent afford such a representation of the whole state of the case as to leave you no cause either to controvert or qualify any part of it: and if you should find that representation complete and accurate, you will take such measures for the relief of the Company as it may be in your power to adopt."

arrested and detained at the same time, Te Kanae and Tamaihengia, as well as two lesser chiefs. Te Rauparaha is told he will be shot if he attempts to escape. Grey and Last go ashore and supervise the destruction of Ngati Toa's stocks of arms and ammunition.

(1 August) Government forces close on Te Rangihaeata's base at Pauatahanui but he and his people manage to escape at the last moment. Capture of Matini Ruta by a force attacking Pauatahanui from the Hutt Valley (he is later hanged as a rebel).

(2 August) Major Last and some of the troops reach Pauatahanui coming from the direction of Paremata. Grey visits Te Rangihaeata's abandoned pa at Pauatahanui.

(August 3) The main force, including a section of Ngati Toa led by Rawiri Puaha, reach Pauatahanui. The combined forces commence the pursuit of Te Rangihaeata and his people retreating from Pauatahanui.

(August 6) Engagement at Battle Hill (between Pauatahanui and Wainui). Rawiri Puaha meets with Te Rangihaeata in the morning before the engagement. Ngati Toa are on both sides of the battle.

(August 10) Regular forces are withdrawn from Battle Hill leaving the Ngati Awa under Te Puni and Wi Tako and part of Ngati Toa led by Rawiri Puaha in position.

(20 August) The pursuing party descends to Wainui and Scott and some others go on to Waikanae where they meet other sections of the government force. Wiremu Kingi declines to join in the pursuit. The government's Maori allies thereupon decline to act further in the matter without Ngati Awa support.

(August 28) A key meeting is held at Otaki. Here Nohorua and other Ngati Toa chiefs attempt to persuade Ngati Raukawa to join in the pursuit of Te Rangihaeata. Ngati Raukawa decline to become involved, nor are they willing to actively support Te Rangihaeata.⁹³⁸ Te Rangihaeata continues on to Poroutawhao.

(early September) Rawiri Puaha and his people return to Porirua.

(14 September) Grey responds to Gladstone's memo of 21st March, stating (i) that the same complaints had been made to him by the Company's Agent in New Zealand; (ii) that the law officers had advised him "that the exceptions in these grants objected to by the Company were such as to afford them reasonable ground of complaint"; and (iii) enclosing a copy of his instructions to McCleverty.⁹³⁹

(14-15 September) Court martial sits at Paremata to try Matini Ruta. He was accused of resisting and wounding Tamata Ngapuna of Ngati Awa and of being in rebellion against the Crown.⁹⁴⁰

⁹³⁸ On this meeting see Scott, "Narrative", 28 August 1846; W T Power, *Sketches in New Zealand*, 32-33.

⁹³⁹ Grey to Gladstone, 14 September 1846, Mackay, I, 71.

⁹⁴⁰ See Wards, *Shadow of the Land*, 294.

(17 September) Matini Ruta is executed.

1847

(February) Act of Indemnity (ends martial law).

(March) Te Rangihaeata and those who have retreated with him build a fighting pa at Poroutawhao near the Manawatu river. By this time Ngati Rangatahi (who had been aided by Te Rangihaeata) had been forcibly expelled from the Hutt Valley by Crown forces in alliance with Te Ati Awa and the lukewarm assistance of Rawiri Puaha's section of Ngati Toa.

(18 March) Wairau Purchase. There are only three signatories for Ngati Toa, Rawiri Kingi Puaha, Henere Matene te Whiwhi, and Tamihana Te Rauparaha.

(23 March) Grey writes to William Wakefield concerning the Porirua and Wairau purchases and invites the Company to take up the sections already allotted by the Company to settlers in both areas.

(27 March) Wakefield complains to Grey about the New Zealand Company now having to pay for the sections at the Wairau and Porirua.⁹⁴¹

(1 April) Porirua purchase.⁹⁴² The signatories for Ngati Toa are Rawiri Kingi Puaha, Te Watarauhi Nohorua, Mohi Te Hua, Henere Matene Te Wiwi, Tamihana Te Rauparaha, Nopera Te Ngiha, Ropota Hurumutu, Paraone Toangina. The consent of Te Rangihaeata (still being pursued) and Te Rauparaha is not sought. Grey essentially ignores the pre-existing reserve allocations at Porirua.⁹⁴³

(24 and 27 Nov) The *John Wickliffe* and the *Philip Laing* sail from Gravesend and Greenock respectively carrying colonists for the NZ Co's new project, the Otago settlement.

1848

(Jan) Te Rauparaha is released from custody.

(27 Jan) Wellington (Port Nicholson Block) Crown Grant by Governor Grey (Second Wellington Grant). This is for a vastly bigger area than Spain's award and Fitzroy's grant in 1845 (209,247 acres as compared with 71,900 acres).⁹⁴⁴ Note also Moore, Wai 146 Doc#I7, 33.⁹⁴⁵

The 1848 Port Nicholson Crown grant excepted four large blocks of land *outside* the area dealt with in the *text* of the 1845 Port Nicholson

⁹⁴¹ William Wakefield to Richmond, 25 March 1847, CO 209/52 [CFRT Te Tau Ihu DB 1454-72].

⁹⁴² *Turton's Land Deeds of the North Island*, Wellington No 22, Vol II, p 127.

⁹⁴³ Duncan Moore, *Questions Regarding the Port Nicholson Purchase: Surplis Lands, Purchase Consideration and Title to Maori Reserves*, Wai 145 Doc#I7, 41.

⁹⁴⁴ On the 1848 grant see especially Waitangi Tribunal, *Te Whanganui a Tara*, 251-267.

⁹⁴⁵ Duncan Moore, *Questions Regarding the Port Nicholson Purchase: Surplis Lands, Purchase Consideration and Title to Maori Reserves*, Wai 145 Doc#I7, 33. See map in the Waitangi Tribunal's *Te Whanganui a Tara Report* facing p. 254: this map identifies the areas referred to. This still leaves a very substantial 'remainder' area.

Land Claims Award. These blocks were at Korokoro (1214 acres), Parangarau (4704 acres), Orongorongo (69990 acres) and Ohariu (1431 acres). In 1848, it set aside three more fairly large areas, 350 acres at Te Ika a Maru, 400 acres at Waiariki, and 20 acres at Oterongo....While lying outside the 1845 award *text*, the blocks lay *inside* the exterior boundary shown on that same award's *plan*. In short, these reserved blocks lay in the 'surplus' portions of the 1845 Port Nicholson Land Claims award..

(April) Beginning of Ngati Awa's return to Taranaki.

(15 May) Grey forwards a proposal to London that Maori land be acquired by nominal purchase of large blocks within provision for reserves (as opposed to requiring Maori to prove claims to cultivations, villages etc.) Grey argues that under his method the labour of identifying areas for Maori settlement will be "very trifling" and will give "to the act of registration the appearance of a boon conferred by the Government, instead of clothing it with a compulsory character".⁹⁴⁶ Evison argues that this is a different approach to the comparatively generous method adopted with Ngati Toa in the Wairau and Porirua deeds of 1847 and that Ngai Tahu were to be the main victims of the new policy.⁹⁴⁷

(12 June) Kemp's purchase (Canterbury deed).

New grant made to NZ Co. for the Nelson District, which also includes the Wairau area acquired from Ngati Toa.⁹⁴⁸

1849 **Rangitikei/Turakina transaction.**⁹⁴⁹ This is "an immensely rich tract of almost a quarter of a million acres between the Rangitikei and Turakina Rivers".⁹⁵⁰ The purchase is conducted on behalf of the Crown by Donald McLean. Ngati Apa's rights to sell are disputed by Te Rangihaeata.

1850 **(4 March)** Waitohi purchase. This is a small area purchased from Ngati Awa bounded by the Wairau block and Queen Charlotte Sound (£300).

1851 **(March)** Charles Brunner surveys off the Wairau Purchase block and the Ngati Toa reserves at Wairau, Te Hoiere etc; the plans are witnessed and signed by Wiremu Te Kanae, Haka, and Hakaraia Kaikoura.

(December 11) First of Ngati Toa's two letters to Grey relating to Ngati Toa rights in the Upper South Island.⁹⁵¹

1852 **(15 May)** Pakawau Deed (Ngati Toa, Ngati Awa, Ngati Rarua, Ngati

⁹⁴⁶ BPNZZ 1847-48/7 p 22, cited Evison, *Te Wai Pounamu*, 254.

⁹⁴⁷ Evison, *Te Wai Pounamu*, 255.

⁹⁴⁸ Mackay I, 4 (Part II).

⁹⁴⁹ This has been studied in detail by David Armstrong: see Armstrong, "A Sure and Certain Possession": *The 1849 Rangitikei/Turakina Transaction and its Aftermath*, Report Commissioned by Te Runanga o Ngati Apa, 2004.

⁹⁵⁰ Armstrong, *op.cit.*, 1.

⁹⁵¹ See Biggs, "Two Letters from Ngaati-Toa to Sir George Grey", *Journal of the Polynesian Society*, vol. 68, 1959, 262-76.

Tama.) This is the area around Farewell Spit and across to West Whanganui and the mouth of the Aorere. Price £550.

(September 29) Second of the two Ngati Toa letters to Grey regarding Ngati Toa rights in the South Island.⁹⁵²

1853 **(12 February) Ohau and Waikawa Ferry Block sale.**⁹⁵³ The vendors are **Ngati Raukawa**. Price: £15.

(10 August) Ngati Toa deed of sale ceding all remaining Ngati Toa interests the South Island. The deed was originally negotiated by Grey with the assistance of McLean. Price is £5000.

(11 August) McLean reports to Grey to the outcome of the Ngati Toa Te Waipounamu deed.⁹⁵⁴ McLean notes that it is “the Ngatitua chiefs, who are acknowledged by the Natives generally, to have the principal claim”.

(13 August) Grey’s report to the Duke of Newcastle on the Ngati Toa Te Waipounamu deed.⁹⁵⁵

Matene te Whiwhi and **Tamihana Te Rauparaha**, who lived at Otaki, embark on a mission around the country to “spread a benevolent and mystical doctrine of Maori national unity”.⁹⁵⁶

1854 **(2 March)** Te Ati Awa deed of sale ceding claims to land in

Queen Charlotte Sound and the Wairau Valley. This is executed at New Plymouth as by this time Te Ati Awa have mostly returned to Taranaki.

(November) Brunner and Jenkins begin the process of surveying the reserves in the Te Waipounamu Block but encounter considerable local opposition.⁹⁵⁷

1855 **(10-13 November)** Ngati Tama and Ngati Rarua deeds ceding all claims to land in the South Island. This deed is executed at Nelson; price £600.

(31 December) Otaki Ferry Block lease.⁹⁵⁸ The lessors are **Ngati Raukawa**: the lease is £20 per annum.

⁹⁵² See Biggs, "Two Letters from Ngaati-Toa to Sir George Grey", *Journal of the Polynesian Society*, vol. 68, 1959, 262-76.

⁹⁵³ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 27, pp pp 136-37.

⁹⁵⁴ McLean to Civil Secretary, 11 August 1853, copy on MA 13/26 17(b), Archives New Zealand Wellington.

⁹⁵⁵ Grey to Newcastle, 13 August 1853, copy on MA 13/26 17(b), Archives New Zealand Wellington.

⁹⁵⁶ Sinclair, *Origins*, 69-70. “They did not foresee the consequences of their mission, and both were later to repudiate the King movement. Nevertheless, their activities served to inaugurate the organization of Maori sentiment against land selling.” Whether their mission was really “mystical” may be doubted.

⁹⁵⁷ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85, at 1564.

⁹⁵⁸ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 28, pp 137-38.

- 1856** **(1 Feb)** Rangitane are paid £100 to extinguish all claims to land in the South Island.
- (9 Feb)** Te Ati Awa deed of sale conveying all their claims to land in the South Island to the Crown (£500).
- (16 Feb)** Ngati Kuia deed of sale which cedes claims to Kaituna, Te Hoiere and all other South Island claims (£100)
- (5 March)** Ngati Koata deed of sale ceding claims in Nelson Province (£100).
- (7 March)** Ngati Tama deed ceding claims in Massacre Bay (i.e. Golden Bay). (£60).
- (7 March)** Deed with Ngati Tama and Ngati Rarua ceding claims to land at and adjacent to Separation Point, Nelson (£150) (This is distinct from the "Te Waipounamu" deeds.)
- (10 March)** Ngati Tama deed ceding claims at Motupipi and Takaka (Nelson) (£60).
- (7 April)** McLean reports to Governor Gore Browne as to the completion of the Te Waipounamu purchases.⁹⁵⁹
- 1858** **(20 April) Waikanae Block deed.**⁹⁶⁰
- 1859** **(Nov 1)** Establishment of Marlborough Province.⁹⁶¹
- (29 March)** Kaikoura Deed (Ngai Tahu); this overlaps with the Wairau deed boundary of 18 March 1847.
- (9 June) Wainui Block deed.**⁹⁶² Land from Paekakariki to to Whareroa is sold to the Crown for £850. The signatories to the deed are 'Ko Te Waka Toa', Hemi Waretī, Reweti Te Horomamaku, and 95 others, including Tamihana Te Rauparaha and Matene Te Whiwhi.
- 1860** **(21 May)** Arahura Deed (Ngai Tahu); this overlaps with the Te Waipounamu boundary of 11 August 1853.

⁹⁵⁹ McLean to Gore Browne, 7 April 1856, CO 209/135, DB 1557-85.

⁹⁶⁰ H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 23, pp 129-30. Signatories are Matene Te Whiwhi, Nopera, Hori Tumu, Mohi Tiaho, Poihipi Te Ono, Tiaho, Hemi Wakata, Tamata, Rawiri Puaha, Heruwiwi Te Tupe, Ropata, and Teira.

⁹⁶¹ A.D. McIntosh, *Marlborough: A Provincial History*, Marlborough Provincial Historical Committee, Blenheim, 1940.

⁹⁶² H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, Government Printer, Wellington, 1878, vol II, Wellington Deed No. 23a, pp 95-97.

- 1862** (28 May) **Papakowhai Block sale** (Porirua) (Ngati Toa Vendors).⁹⁶³ This is a small block bounded by the Kenepuru Stream at Porirua. The sale price of £210 is paid by Isaac Featherston.⁹⁶⁴
- 1863**
- 1865** (1 December) **Mana Island purchase** (Ngati Toa vendors): £300.⁹⁶⁵
- 1866** (December) **Rangitikei-Manawatu purchase**. 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 is exempted from the Native Lands Acts of 1862 and 1865.⁹⁶⁶
- 1868** (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.⁹⁶⁷
- 1873** (10 June): **Manawatu-Kukutauaki 2C Deed of Lien**.⁹⁶⁸
- (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.⁹⁶⁹ 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)**.⁹⁷⁰ This seems to principally be a **Ngati Awa** sale.⁹⁷¹ This is a large block of 19,600 acres.
- (April): Native Land Court at Otaki investigates titles to Kapiti.⁹⁷²

⁹⁶³ 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.

⁹⁶⁴ 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.

⁹⁶⁵ *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.

⁹⁶⁶ See generally Bryan Gilling, *'A Land of Fighting and Trouble': the Rangitikei-Manawatu Purchase*, Report for the Crown Forestry Rental Trust, May 2000.

⁹⁶⁷ Mackay to McLean, 28 August 1868, MA 13/17, WNA.

⁹⁶⁸ 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.

⁹⁶⁹ Order, 22 November 1873. WN 42 Kenepuru (Vol 1) Block Order file (General Land).

⁹⁷⁰ 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.

⁹⁷¹ Judging by the list of signatories, although some of them may be Ngati Toa as well.

⁹⁷² The Kapiti Island hearings are in (1874) 2 Otaki MB. The case was heard by Judge Rogan. Final orders were made on 1 May.

(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)

(3 December). Wairarapa Block (Otaki) Purchase.⁹⁷³ 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.⁹⁷⁴ A Ngati Raukawa transaction. This is a large block (10,050 acres): price is £1,457.

1875 **(7 January) Ngakororo 2B Purchase (Otaki).**⁹⁷⁵ Ngati Raukawa transaction. Price £257 10s: area is 1933 acres.

(3 February) Manawatu-Kukutauaki 4A purchase.⁹⁷⁶ Ngati Raukawa transaction. £550.

(3 February) Manawatu-Kukutauaki 4C and part 4B purchase.⁹⁷⁷ Also a Ngati Raukawa transaction. Price £421.17.6; area 1445 acres.

(4 February) Pukehou No 1 Block purchase.⁹⁷⁸ Ngati Raukawa: £200: 1685 acres.

(4 February) Pukehou No 3 Block purchase.⁹⁷⁹

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

⁹⁷³ 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.

⁹⁷⁴ 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.

⁹⁷⁵ 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.

⁹⁷⁶ 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.

⁹⁷⁷ 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).

⁹⁷⁸ 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).

⁹⁷⁹ 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)

(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.⁹⁸⁰

(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.⁹⁸¹

1881 **(29 January)** Report of the Ngati Toa Royal Commission.⁹⁸²

(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.

1882 **(22 October)** Native Land Court partitions the Kapiti Blocks.

1883 The Native Land Court vests Rangitito (D'Urville Island) in Ngati Koata, of the tribes of Ngati Toa; the claim is made on the basis of a gift from the tangata whenua to Ngati Koata and is uncontested.⁹⁸³

(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 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.⁹⁸⁴

1895 **(20 September)** Interlocutory decision by the Native Land Court relating to **Kenepuru**.⁹⁸⁵

1897 **(22 December): Kapiti Island Public Reserve Act.**⁹⁸⁶ 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

⁹⁸⁰ See Minutes of meeting of 31 May 1880, MA 13/17 WNA.

⁹⁸¹ See (1881) AJHR G-2

⁹⁸² See (1881) AJHR G-2

⁹⁸³ (1883) 1 Nelson MB 1 (Judge Mair)

⁹⁸⁴ (1892) 2 and 3 Nelson MB.

⁹⁸⁵ Order of 20 September 1895. WN 48 Kahotea Block Order file.

⁹⁸⁶ See generally C. and J. Maclean, *Waikanae: past and present*, Whitcombe Press, 1988, 214-5.

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.

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”.⁹⁸⁷

⁹⁸⁷

J.H. Grace, Domestic Survey of South Island Maori Settlements 1937, MS 173-4/5, WATL.

APPENDIX 2:

Ngati Toa and the making of the Wellington Crown Grant

Introduction

The formation of the Crown grant to the New Zealand Company (which was actually granted twice, first by Governor Fitzroy on 29 July 1845, and secondly by Governor Grey on 27 January 1848) is a very complicated story. It is however essential that this process is understood thoroughly by all parties involved in the negotiation and settlement of Ngati Toa's claims. Although the process is touched on in the main report, the fact is that so much happened in the years between the arrival of the *Tory* at Port Nicholson in 1839 and the final Crown grant in 1848 that there is a risk that the process of the formation of the Wellington grant becomes obscured. For that reason I have decided to set out the main stages in this brief analytical appendix so that the main steps are understood clearly.

To deal with this the stages in formation of the Crown grant at Wellington have been broken down into a number of steps. Each of these steps is described first in general terms and then secondly with reference to the role, if any, played by Ngati Toa in the process.

Step One: The New Zealand Company Transactions of 1839-40

A. General

The New Zealand Company's preliminary expedition led by Captain William Wakefield arrives at Queen Charlotte Sound on 17 August 1839, and then crosses Cook Strait to Port Nicholson, arriving there on 20 September 1839. Three purchase deeds are drawn up relating to central New Zealand; these are the Port Nicholson deed (27 September), the Kapiti deed (25 October) and the Queen Charlotte Sound deed (8 November). All three deeds pre-date British annexation of New Zealand. The deeds may or may not give the Company an equitable title but this needs to be converted somehow into a legal title. In its *Te Whanganui a Tara* Report (2003) the Waitangi Tribunal found that the "1839 [Port Nicholson] deed of purchase was invalid and conferred no rights either under English or New Zealand law on the New Zealand Company or on those to whom the Company subsequently purported to on-sell part of such land".

B. Ngati Toa Involvement

The second (Kapiti) deed is signed by nine Ngati Toa chiefs, who supposedly cede to the Company land from the 43rd parallel in the South Island to Wanganui.

Step Two: Crown and New Zealand Company Negotiations:⁹⁸⁸

A. General

The New Zealand Company draw up an agreement with the British government in November 1840. The agreement recognises the Company as an official colonising body. The agreement vests the *legal* title to the ‘tenths’ reserves in the Crown (Maori have a *beneficial* or *equitable* title: the Crown holds the tenths *on trust*). The Company waives its claim to land based on the 1839 deeds, except that these have some undefined status in terms of extinguishing Native title to some extent (this is never really resolved). Instead the British government agrees that the Company can acquire title to land in New Zealand based on a *formula*: 4 acres of land for every £1 spent. An independent accountant, Charles Pennington, is appointed to audit the Company’s accounts and calculate the acreage. Lord John Russell writes to Governor Gipps at Sydney advising the latter of the negotiations and instructing Gipps to take no action under the New Zealand Land claims ordinance at that time under consideration by the New South Wales Legislative Council.

B. Ngati Toa involvement

None.

Step Three: Allocation of Tenths and Reserve Sections by the New Zealand Company

General

The ‘tenths’ scheme involved allocation of urban and rural sections to Maori. This was done was by means of an ‘order of selection’ ballot. Ballottees drew for a right of selection once surveys were done: i.e. the person who drew lot No 1 would have first choice, no 2 second choice and so on. The ballot was done in England on 29 July 1839. 110 ‘sections’ (in fact, rankings in order of selection) were allocated to Maori on this basis.⁹⁸⁹ When the town of

⁹⁸⁸ The TEXT of the agreement is in BPP vol 3, pp 207-9; for an ANALYSIS of the agreement see Waitangi Tribunal, *Te Whanganui a Tara*, 92-94.

⁹⁸⁹ The list of orders for the selection of Native-reserve ‘tenths’ is reprinted by Jellicoe, *New Zealand Company’s Native Reserves*, 13. 110 sections were allocated: 7, 15, 20, 22, 28, 51, 54, 68, 73, 100, 106, 109, 123, 131, 138, 150, 151, 167, 173, 175 etc (total 110).

Wellington was surveyed it was divided into 1,100 town and 1,100 rural sections. According to Mackay:⁹⁹⁰

The site of the new town was called Wellington, and according to the plan on which the settlement was founded it was laid out in 1,100 sections of one acre each besides reserves for public purposes; 1,100 rural sections of 100 acres each were also laid out in various parts of the neighbouring country. Each purchaser in London of one right of selection became entitled to an order of choice determined by lot as soon as all had been purchased, to select one town and one country section. 110 sections were reserved for the Natives and treated precisely in the same way as to the order of choice as though each of the sections had been purchased by a private individual.

The selection is done not, of course, by Maori but by the Company surveyor, Mein Smith. The New Zealand Company appoints **Edmund Halswell** (a barrister) as Commissioner for Native reserves. In New Zealand Halswell also acquires the government position of Commissioner of Native Reserves in New Zealand May 1841. Halswell acquires the position of Protector of Aborigines at Port Nicholson but he is subsequently replaced by **George Clarke jr.**, son of the Chief Protector **George Clarke sr.** (who is based at Auckland).

Step Four: The Spain Inquiries, with particular reference to Ngati Toa

On 20 January 1842 **William Spain** is appointed as Land Claims Commissioner by the British government to investigate the claims of the New Zealand Company. Spain travels to New Zealand and arrives in December 1842. He is also made a Land Claims Commissioner under the New Zealand Land Claims ordinance. Spain receives instructions from Governor Hobson in March 1842.⁹⁹¹ Little progress is made with the enquiries at first. In March 1843 Colonel Wakefield decides to refuse to participate further in the discussions. In England the directors of the New Zealand Company protest to the British government about being expected to make any further payments to extinguish Maori title in New Zealand. The Company's view is that it has done that already with the pre-1839 transactions and that it has an absolute right to the acreages in New Zealand as calculated by Pennington following the November 1840 agreement with Lord John Russell.

Spain conducts his enquiries over the next few years.

Ngati Toa Participation

⁹⁹⁰ Alexander Mackay, *Memorandum on the origination of the Native Reserves set apart by the New Zealand Company*, 1873 AJHR G-2B, 3.

⁹⁹¹ Shortland to Spain, 26 March 1842, IA 4/253.

Ngati Toa do participate in the inquiries. Both Te Rangihaeata and Te Rauparaha give evidence.

Step Five: Deeds of Release

In 1844, following a crucial meeting at Major Richmond's home on 29 January 1844, Wakefield reluctantly agreed to make separate payments to Wellington Maori to compensate them for their lands at Port Nicholson.⁹⁹² Wakefield agreed to obtain the necessary funds from the Company. The terms of the arbitration were left to be sorted out by George Clarke jr. as Native Protector. The government is generally not prepared to allow any further discussion of the matter by Maori. On 23 February Spain opens a special sitting of his Court of Claims at Te Aro with the object of securing the agreement of the Te Aro people to the deeds of release scheme. The local people are reluctant but in the end agree and accept their share of the £1500 (£300) on 26 February. The Pipitea (£200), Kumutoto (£200) and Tiakiwai people (£30) do the same. That leaves the balance to be paid out to other groups, including Ngati Toa.

Each deed of release is essentially the same, recording an agreement to accept a share of the purchase money in exchange for a surrender of claims to a number of places listed in the Schedule to each deed. These places are "Watts' Peninsular [sic], Evans Bay, Town District, Ohiro District, Karore [Karori], Kaiwarawara, Upper Kaiwarawara, Te ra witi, Oterongo, Makara, Ohariu, Kinapora, Harbour, Horokiwi Road, Lower Hutt, Upper Hutt, Lowry Bay, Pakuratahi, Wainuiomata, Block reserved for Natives Kaiwara." At this stage there is still no exterior survey of the Port Nicholson block, just the Company's own surveys of the town and country sections (which includes sections at Porirua, Plimmerton-Mana, the Horokiwi Valley, and Upper and Lower Hutt).

Ngati Toa Participation/Issues

This is a vital stage of the process for Ngati Toa. A number of points are relevant. First, the Waitangi Tribunal has found adversely against the whole of the deeds of release scheme, and has found that Maori could not have adequately grasped the arrangement and were pressured into agreeing to it.⁹⁹³ Secondly, the deeds of release scheme certainly did recognise Ngati Toa rights in the Port Nicholson Block, as £300 was set aside specifically for Toa (the same as for

⁹⁹² On this meeting see especially Waitangi Tribunal, *Te Whanganui a Tara*, 125-6.

⁹⁹³ See Waitangi Tribunal, *Te Whanganui a Tara*, 176-182.

the people of Te Aro and Pipitea). Thirdly, the deeds of release also ‘released’ claims to Makara and Ohariu, although arguably the prime rights holders there were Ngati Toa.

Most importantly, though, is the fact that Ngati Toa, although willing to accept their share of the £1500, did not accept that the agreement could properly extend to the Hutt Valley beyond Rotokakahi. In March 1844 Spain and Clarke meet with Ngati Toa, where the sum is increased by an additional £100 for the crops, but still Ngati Toa do not agree. Some days later Taringa Kuri of Ngati Tama cuts a massive boundary line at Rotokakahi in the lower part of the valley. There is a further attempt to pay the £400 to Ngati Toa in November, but Te Rangihaeata refuses to accept any of the money. This November 1844 deed is the closest that Ngati Toa comes to executing any ‘Deed of Release’. Te Rangihaeata finally signs the Toa deed of release in 1845. The Waitangi Tribunal has found that no agreement binding on Ngati Toa was in fact concluded in 1845.⁹⁹⁴

Step Six: Extension of the Port Nicholson Block in 1844

An exterior survey of the Port Nicholson block was finally done by September 1844.⁹⁹⁵ The survey is done by the Land Claims Commission’s own surveyor, T H Fitzgerald in association with the New Zealand Company surveyor Samuel Brees. A copy of this survey, dated 7 October 1844, was later attached to Spain’s final report on the Port Nicholson block claim. One effect of this survey is to very significantly expand the area of the Port Nicholson block (as described in the 1839 deed) to take in a large area of the southwest coast, including Makara and Ohariu. Quite how or why this was done is a bit of a puzzle. The Waitangi Tribunal has drawn attention to this discrepancy in its *Te Whanganui a Tara* report, where the Tribunal observes:⁹⁹⁶

By September 1844, the survey of the exterior boundary of the Port Nicholson deed had been completed....A notable feature of the plan was *the extension of the boundary to the south-west coast* [emph. added]. As described in the 1839 deed, the so-called western Rimurapa ridge line went down to the south coast at Sinclair Head, but the boundary shown on the 1844 plan extended out to the west coast at Kia Kia (just north of Pipinui Point) and was almost at a right angle to the line recorded in the 1839 deed. As a result, some 40,000 to 50,000 additional acres were added to the deed of purchase area.

Impacts on Ngati Toa

⁹⁹⁴ See Waitangi Tribunal, *Te Whanganui a Tara*, 205.

⁹⁹⁵ This plan is reproduced as Map 6 in Waitangi Tribunal, *Te Whanganui a Tara*, 164.

⁹⁹⁶ Waitangi Tribunal, *Te Whanganui a Tara*, 181. See also the map at *ibid*, p 2, which makes the scale of the extension only too clear.

The extension of the surveyed boundary block, coupled with the Crown's insistence that the 1844 deeds of releases extinguished title to the *entire block* has very significant implications for Ngati Toa. Ohariu and Makara are in effect taken without Ngati Toa agreement and without payment of compensation.

Step Seven: Spain's final reports (1845)

Commissioner Spain reported on his inquiries from Auckland in March 1845. The New Zealand Company's claim for a grant at Porirua was rejected, because of the conflicting evidence between Colonel Wakefield, E J Wakefield and Brook on the one hand, and Te Rauparaha and Te Rangihaeata on the other. Spain concluded that the Company was entitled to a grant at Port Nicholson of 71,900 acres, but excluding:

- All the pas, burial places and grounds actually in cultivation;
- Native reserves comprising country sections of 100 acres each and 110 town sections;
- Four portions of land granted to private claimants;
- All the lands set apart as Government reserves for public purposes.

The area that the Company should receive a grant for includes the sections it had surveyed in the Hutt Valley. In other words the Company is entitled to a Crown grant in the *Hutt*, but not at *Porirua*.

Spain finds also that the Company is entitled to a large Crown grant at Nelson (11,000 acres at Nelson, 38,000 acres on the Waimea plains, 15,000 at Moutere, 42,000 acres at Motueka and 45,000 at Massacre (Golden) Bay.) Spain accepts that Ngati Toa have interests in these areas but they have agreed to extinguish them. The Company's claim for a grant at the Wairau is rejected by Spain. One important outcome of the inquiry process as a whole is that Spain repudiates the Company's claim to two of Ngati Toa's core areas, the Wairau and Porirua, although the Company has surveyed off sections in both.

Step Eight: Fitzroy's Wellington [and Nelson] Grants (1845)

Despite the fact that the cultivation etc. areas were still not clearly defined, Fitzroy now goes ahead and issued Crown grants to the New Zealand Company for Port Nicholson and for Nelson on 29 July 1845. In the case of Port Nicholson this is the first of two grants, the second one being made by Grey in 1848. Both the Nelson and Wellington grants stuck to the letter of Spain's findings. Both grants excluded 'tenths' allocations to Maori *and* pas,

cultivations, and burial places. The Nelson grant, at 151,000 acres, was by far the larger of the two.⁹⁹⁷ It excluded “all the pas, or burial-places, and grounds actually in cultivation by the Natives” and *also* “all the Native reserves marked up on the plan hereon endorsed and coloured green – the entire quantity of land so reserved being one-tenth of the 151,000 acres of land granted to the said Company”. The Wellington grant granted to the New Zealand Company “all that parcel of land...said to contain 71,900 acres, more or less’ at Port Nicholson. Excepted from the grant, as at Nelson, were the separate categories of ‘tenths’ reserves, and the pa-cultivations-burial reserves.”⁹⁹⁸

Step Nine: Rejection of the Wellington Grant by the New Zealand Company

The Company is very dissatisfied with Fitzroy’s grants. It brings political pressure upon the British Government in order to weaken the position of Governor Fitzroy and if possible to secure his dismissal. On 29 July 1844 the House of Commons issues a Select Committee Report on New Zealand which includes voluminous amounts of evidence. There is also a major House of Commons debate on New Zealand affairs in June 1845. The Tory government gives in to the political pressure and Fitzroy is dismissed and replaced by Governor Grey. The Secretary of the New Zealand Company complains to Gladstone on 23 February 1846 about the terms of Fitzroy’s grants, and Gladstone directs Grey to do all he can to assist the Company.

Step Ten: The McCleverty Investigations and Awards

The new Governor (Grey) now annuls Fitzroy’s 1845 grant. In Britain the Colonial Secretary (Lord Stanley) had Lieutenant-Colonel McCleverty to go to New Zealand to assist the New Zealand Company. McCleverty completes his inquiries and rearrangements in 1849.

Step Eleven: Grey’s 1848 Crown grant

⁹⁹⁷ The Nelson Crown grant of 29 July 1845 is in Mackay, I, 68-9.

⁹⁹⁸ The grant excepted (enclosed with Fitzroy to Stanley, 1 August 1845, BPP, vol 5, 213): All the pas, burial-places and grounds actually in cultivation by the natives, situated within any of the said lands hereby granted to the New Zealand Company as aforesaid; the limites of the pas to be the ground fenced in around the native houses or huts, including the ground in cultivation or occupation around the adjoining native houses or huts without the fence, and the cultivation being those tracts of land which are now used by the natives for vegetable productions, or which have been so used by any aboriginal natives since the establishment of the colony; and also excepting the 39 native reserves of 100 acres each, and the 110 town acres, which said reserves for the natives are shown upon the plan endorsed hereon; and excepting the two other native reserves of 100 acres each.

On 27 January 1848 Governor Grey issues a new grant to the New Zealand Company, this being for a much bigger area than the first (Fitzroy) grant of 1845. The boundaries of the 1848 grant are shown in the various maps included in the Waitangi Tribunal's *Te Whanganui a Tara* report.⁹⁹⁹ The area was the whole of the 1839 purchase area as extended to include the Ohariu-Terawhiti area in 1844.¹⁰⁰⁰ While Fitzroy's 1845 grant followed Spain's award and confined the grant to 71,900 acres (less 'tenths' and pa, cultivations and urupa) Grey's grant was for an area of 209,247 acres. It was this grant which formed the southern boundary of the Porirua purchase of 1848. Within this very substantial area there were various categories of reserves, including 'tenths' reserves and pas and cultivations still in Maori ownership.

The Waitangi Tribunal has found that once the surveyed sections and areas 'released' under the Deeds of Release in 1844 are subtracted (along with the allocated reserves tabulated above) the grant included an area of no less than 120,626 acres vested in the New Zealand Company – and, of course ultimately in the Crown – with no payment or compensation having been made to Maori at any time.¹⁰⁰¹

Issues/Implications for Ngati Toa

Specifically with regard to Ngati Toa the Tribunal has already found:¹⁰⁰²

In the case of Ngati Toa, we have used the same touchstone in section 9.5.1 in concluding that, when in 1845 Te Rangihaeata finally acceded to the November 1844 'agreement', he surrendered Ngati Toa's ahi kaa rights to the lands allotted to the New Zealand Company under the schedule to the 1844 or later deeds of release, subject to the condition that land be reserved for Ngati Rangatahi in Heretaunga. But Ngati Toa retained their take raupatu over the remaining land in Heretaunga and elsewhere in the Port Nicholson block over which the other Maori in the Port Nicholson block also had take raupatu.

⁹⁹⁹ See *Te Whanganui a Tara*, maps facing pp 254 and 262 especially. Note, however, that these maps do not make it clear that there were also New Zealand company surveyed sections at Porirua and earlier 'tenths' allocations there as well, made initially by Halswell in 1842.

¹⁰⁰⁰ See the above maps and map 1, in *ibid*, p 2.

¹⁰⁰¹ Waitangi Tribunal, *Te Whanganui a Tara*, 254.

¹⁰⁰² *Ibid*, 255.

Appendix 3

Key documents and texts:

Despatch from William Wakefield, 17th August 1839
NZC 3/1, National Archives, Wellington

Ship Cove, Queen Charlotte's Sound, Cook Strait, August 17th, 1839

Sir,

In my last letter to you, and the only one I have had an opportunity of sending since we left England, was dated June 3rd, and was shortly to inform you of the safe progress of the Expedition nearly to the Equator...

We came up the Sound between Motuara and Long Island, the Sunken Rock, which Cook discovered, in his last voyage, in the passage between Motuara and the land to the N.W. not being precisely laid down,

As we entered the Sound we saw four canoes sailing from the N.W., as if with a view of coming up with us, and before we were at anchor, another, from one of the coves at the entrance, containing eight natives, came alongside us. It had, at some distance, the appearance of its owners hesitating to venture near us; but it turned out that they only stopped occasionally to bale out their canoe, which was very frail and shabby, consisting of a single tree hollowed out for the bottom, and a few rough planks, ill put together, for its sides.

As the canoe ran alongside the ship, then scarcely making its way through the water, it was lashed to the main chains and the men from it were on our deck in an instant. As they were unarmed, no precaution had been used to prevent such an occurrence, and at first sight their savage appearance, wild expressions of countenance, and energetic movements might have led us to believe that their intentions were anything but friendly. They quickly, however, shook hands with every one coming their way on the deck, and seemed to consider that their appearance on board in the way described was a matter of course, and that we were very glad to receive them. They all spoke more or less English, enquired where we were going to anchor, telling us that their cove was the best place, and assumed an air of authority such as a pilot does, who stops on board a vessel entering a strange port. They brought on board a small quantity of fish and potatoes, which were afterwards bought for a little tobacco.

These men are of the Ngatimatui tribe, whose chief lives here, and is tributary to Raupero, the head of the Capiti Tribes, who lives at Capiti on Entry Island. This part of the Sound, however, is owned by Hiko, Raupero's nephew, who inherited it from Tepahi, and who will probably succeed Raupero as chief of the Capiti Tribes. One of them recognized Nayti, the interpreter, as an old acquaintance, and the latter was exceedingly alarmed at their appearance on board; - the aspect of affairs here having greatly changed since he was here three years ago and not indicating a very peaceable state. At that time, no pah or fort existed in the Sound; - but as we sailed into it, the Island of Motuara and Long Island each presented signs of hasty but extensive fortification, if a rough enclosure by palings scarcely so strong as an English sheep pen can be so called; - and we found that a few months ago a quarrel had taken place between the Capiti Tribe and that called Ngatiawa, which resides further up the sound than where we are, respecting the right of proprietorship in Motuara and Long Island, when Raupero crossed the strait with his followers, and after a fight which ended in the slaughter of eight men, had been victorious, when peace was established: - and it still exists.

On the other hand, a schooner from the Bay of Islands had been here with an English and native-chief missionary, whether of the Church or Dissenting Society did not appear, and had transformed these fighting cannibals into Catechists or self-styled Missionaries. Our friends asked for Bibles, and talked of the morrow being Sunday with uplifted eyes...

Monday Oct 7th.

When on shore today I was attacked by all the natives in the most bitter manner respecting the purchase of Port Nicholson. Every one repeated the story of Raupero's rights, and of the certainty of a dispute about them. After a time they were quieted by my telling them that I should be happy to make a similarly extensive purchase from the Kafia tribe, and referring them for the payment of Port Nicholson to Warepori, whom they pretended to despise. They one and all then began to offer me land for sale, begging me to go and look at this place and the other, and were not over pleased when I told them that Captain Cook knew the value of their place when he called it Cloudy, and asked them who would live where he could not see the sun.

Tuesday Oct 8th.

In order not to part with the people here on unfriendly terms, I had all the Chiefs of the Bay on board during the afternoon. They came dressed out in all their finery, and at their head was Raupero's brother, called "Tom Street" after some Sydney merchant. He came to have a "talk" about the Port Nicholson affair. As I saw they were determined to have a "korero" on the subject I took my station on the deck, nominated Mr Wynen's soi-disant wife interpreter, and the debate began. Tommy repeated his story, and gave us his own and Raupero's family history for the last twenty years. He also introduced Eboa's [?] wife, daughter of the celebrated Te Pahi, who was in England. She spoke to the same effect and in a pleasing manner. They afterwards called upon me; and I told them of Raupero's knowledge of the sale and of his messages, and that I should be glad to buy another fine place and to bring as many white people into the strait as would give all the natives employment. They said "very well"; but we want the payment for Port Nicholson". This was another affair in my opinion, and I again referred them to Warepori, and recommended them to make haste in going over to take it, otherwise all the tobacco would be expended and nothing would be left for them but the ball-cartridges. This banter had the effect of putting an end to the discussion. The old men were silent; and the young Chiefs eyed each other as if judging how each was disposed for the adventure.

In the evening an attempt was made to renew the topic; when Mrs Wynen very innocently betrayed the secret, that there would have been nothing wrong in buying Port Nicholson, and no probability of a fight, if Jackey Guard and a Chief or two of the Kafia tribe had been employed in the matter instead of Mr Barrett and the Ngatiawa people...

No 3/39

Teawaiti Tory Channel, October 13th 1839

Sir,

Having waited inst., the date of my last letter to you, in Cloudy Bay, for the arrival of Mr Barrett, who was to be our Pilot across the Strait and on the western coast of the north island, we came around to this place [i.e Te Awaiti] in search of him. We entered the channel from the South East with a favourable wind against a strong ebb tide; but it would be undesirable to do so in a heavy sailing ship. The "Honduras", which takes my last letters and the specimens to Sydney had the tide in her favour in going in yesterday, but stuck on a rock at the northern head and narrowly escaped being totally wrecked. She is now in here, making eight inches of water an hour, but will proceed on her destination in a few days. Before leaving Port Underwood I visited its principal bays and settlements; but saw nothing to induce me to change the unfavourable opinion I entertained of it as a harbour and place of settlement for Europeans.

Monday October 14th

Finding Mr Barrett's wife too ill to allow him to leave home, I made arrangements to pick him up at the northern entrance to Queen Charlotte's Sound, after I shall have been to Capiti;

and made my preparations for a visit to Raupero and the heads of the Kafia tribe with no intermediate beyond an interpreter, whom I engaged in Cloudy Bay.

This visit, besides entering into my original plan, according to the suggestion contained in my instructions, is necessary for the ratification of the purchase of Port Nicholson; that no further question shall arise as to the Company's right to that territory and to put an end to the opposition experienced from the subordinate Kafia Chiefs in all parts of Cook's Strait. The history of Raupero is the most eventful and worthy of Record of any existing New Zealand Chief. His expulsion and that of his numerous and powerful tribe from their Native District Kafia, by the Waikato and Bay of Islands hosts is well known to you from the mention it has received in numerous works on this country. Their forcible seizure and occupation, in their turn, of all the Coast land on both sides of this Strait, has also been described, but the means he has employed for the aggrandizement of his people and the causes of his pre-eminence amongst all classes and clans, extending also to the foreign residents and visitors, has not been dwelt on.

Raupero is at least 60 years old. When a young man he acquired a reputation for strength and courage, founded on his skill in native warfare, which his wiliness and success in all his undertakings have preserved for him in his old age.

He came from Kafia as the fighting general of Te Pahi [Te Pehi] and after of the death of the latter at Otago by Tairoa and Southern tribes, became Chief of the tribe. To avenge Te Pahi's death, which was accomplished by tying up by his heels to a tree and cutting his throat, at which his enemies drank his blood, Raupero engaged with a master of an English vessel, by name Stewart, to carry him and some of his people to Otago under pretence of a trading voyage, where the Master coaxed on board a leading Chief of the tribe and his family. Some of these were immediately killed, after which Raupero and Stewart with their Myrmidons landed and laid waste the settlement, killing man, woman, and child that came in their way.

The Chief who had been enticed on board was made fast in the cabin by a hook through his throat and in despair at seeing his daughter about to become the victim of these monsters, killed her with his own hands. During the voyage back to Capiti the old man was despatched and it is a fact that one of the Ship's coppers was in use for cooking human flesh for his guests and that Stewart and his crew participated, if not in the feast, in the atrocious and revolting preparations for it.

By similar treachery Raupero has acquired his power in other parts and become the terror of all the neighbouring tribes. Unable to cope with the Ngatiawas, who he was forced to allow to live on the lands in Queen Charlotte's Sound, Port Nicholson and on the main abreast of Capiti, when they were driven from Taranake, he is occasionally in alliance with them and more than once has led them into an encounter with their mutual southern enemies for the purpose of deserting them with his people in the midst of the fight, by losses in which manner they have been much thinned. In all negotiations Raupero is considered skilful and is referred to upon many occasions.

Joseph Hurley and others to William Wakefield, re Te Rangihaeata's demolition of houses at Porirua

Appendix to Report from Select Committee on New Zealand, IUP, BPP (NZ), vol 2, Appendix No 2, 108.

18 April 1842

Sir,

In answer to your request, we, the undersigned, respectfully submit a report to you of the riotous proceedings of Rangiaiaata and his party upon our property on the Porerua [sic] district, with an estimate of the loss we have sustained by the unfortunate circumstance.

On Tuesday, March 22nd, 1842, we, in company with Mr. Park, the surveyor, took possession of the land we had engaged, and next day commenced building four houses on the section marked No. 57 on the surveyor-general's plan. We proceeded with our building until Saturday, April 2d, when a body of Teti natives, about 30 in number, came and drove us off,

and told us we should not proceed with the building until they had been paid for the land. We then came to Wellington, and informed Mr Brandon of the circumstance, together with Mr. Wicksteed, the land agent, who consulted with Mr Murphey on the matter. Mr Murphy then despatched the chief constable to Teti. We accompanied Mr. Burgess there on Wednesday, April 6th, and reconciled them.

We then proceeded with building until Wednesday, April 13th, when Rangiaiaata and his party came, armed with guns, horse-pistols and tomahawks; we remonstrated with them for some time, but he became too violent to reason. He then commenced the work of destruction, and cut the whole of the buildings to the ground, of which the following is a just account of the loss sustained: [£53.10s. claimed, mostly for labour, but also for 50 lb of nails]. We are, &c.

Jos. Hurley, Thos. Parry, Benjn. Lowndes, Josh. Torr.

George Clarke Jr to George Clarke Senior

qMS-0649

ATL Wellington (originals in Hocken Library, Dunedin).

13 May 1843

My dear Father,

I am just back again from my coast expedition and I own that I am not at all sorry – not that I dislike being in the bush but I was heartily tired of Mr Spain and the Commission. I find all pretty well at Port Nicholson as far as my own natives are concerned, but Te Hapuku a chief of the Ngatikahununu [sic] tribe was brought away from Ahuriri by a Captain Bell on a charge of theft. I heard of this at Porirua but being in the middle of a case in which I felt a great deal of interest because the Cr. was opposed and prejudiced against my client I could not come over but the question has been settled in a very nice way by MacDonogh the Police Magistrate here. He had stolen about £7 worth of property and was released when paying the sum and promising to behave better in future. I think I shall get on much better with this Police Magistrate than the acting one Mr White, whom I detested for his blasphemy and undecorous on the bench – he was a very weak officer and did not seem to care much for the natives. What I disliked him so much for was his binding the natives to the very strictest letter of the law which was doing them positive injury under a show of justice. I see my name down in las Wednesday's *Colonist* [which] says that the natives have driven away a lot of settlers in consequence of Mr Clarke the Protector of Aborigines having desired them not to allow Europeans to settle on this Land – “we hope that the statement respecting the Protector of Aborigines is incorrect, we cannot believe that he would so far forget himself as to advise the natives to commit outrages similar to that which took place on Saturday – we rather believe that the Maories must have misunderstood him.” So ends the wise comment of the editor of the *Colonist* on what he considers the part Mr Clarke has acted. I rather believe myself that either the Europeans have misunderstood the natives when they mentioned Mr C's name or else they are disgusted with Mr C and wish to throw odium upon his name and suspicion on his proceedings but heoi ano tenei.

There is a great deal of ill feeling against the natives here the settlers find they have been deceived by the N.Z. Company and they cannot get upon their land so they abuse the Maories and their friends – but never mind I hope they will [339] not find me hopping.

The French Man of War is in the harbour and may possibly go to Auckland but she is the first vessel (foreign) that has been in Port Nicholson since its first settlement.

I have been pretty well as far as health is concerned ever since I left Wanganui. I have had a slight pain on my chest at times but nothing of any consequence. I think we shall have a fine winter. I never feel anything the matter with me unless I have taken very violent exercise or have been speaking to the natives for an hour or two. Last Sunday I conducted two services and had nearly a thousand natives present so I was obliged to speak very loud.

I am sorry to hear that the Natives in the northern part of the Island are quarrelling. I hope you will settle it soon if it is not settled already. [331.] You mention in one of your communications that you had received a letter for me from Miss Hopkins of V.D. Land and

that you would send it by the first opportunity. I have not seen it yet. I hope you will send it if it is not already on its way. I hope to hear soon from Hobart Town again. I am hated here by the settlers – but you will not be surprised to hear it.

Your aff son
Geo. Clarke

George Clarke Jr to George Clarke Senior
qMS-0649
ATL Wellington (originals in Hocken Library, Dunedin).
29 May 1843

[336.]

Wellington
29th May 1843
My dear Father,
The *Victoria* arrived yesterday from Auckland with letters

Sir Everard Home to Shortland
15 October 1843
H M Ship North Star 15 October 1843, Nelson.
[Shortland, Willoughby: Government Letters Etc. 1840-1848. Hocken Library, Dunedin, MS 0052]

My Dear Sir,

I forget when it was I wrote to you but just as I was on the point of sailing for Banks Peninsula believing all to be quiet letters from Nelson came to the Major [Richmond] stating that upon good information from several places the Natives were collecting and great numbers of canoes were assembled at the different stations to make an attack on that place. I saw the letters and altho' I did not believe a word, I thought them of a character deserving attention, and I determined to go to Nelson with the ship.

A little time before this, information arrived that the Survey of the Wairau had recommenced. The Major immediately communicated with Col. Wakefield who denied any knowledge of it, that it was done without his order, and that he would have the men recalled and shortly after he told him that it was discontinued and the men had returned to Nelson.

I told the Major that I intended to go to Nelson and asked him if there was any person that could go with me, as my going alone would be of no use whatsoever, and proposed Mr Macdonogh [Police Magistrate at Wellington] which he objected to as his authority might be disputed said he would go himself and take Mr Clarke.

On this I proposed to call at Mana and see Rauparaha, tell him all that was reported, and warn him, at the same time to see with our own eyes how far the truth went as to a muster of men or canoes. He added that we should on no account get upon the Wairau affair, and to get the boat which had been obtained. On the 5th Friday sailed and the same evening anchored under Mana and went onshore. There were few people there, and 16 canoes only. Rauparaha had left that morning at daylight for Waikanai and Rangiaeata had taken to the bush which turned out to be false as he was in a hut and heard every word said.

Next morning Saturday we went to Kapiti and at Waikanae met Mr Hatfield. Rauparaha was there. He denied everything but said that the natives had greatest cause to fear, that the white men told them that they were to be attacked by us, that I had come to kill them and if not for what purpose was I come. This was explained and the son of the Chief of that Pa soon volunteered to go with us to Nelson to speak to the people and to see the truth of the reports and he is here now.

Respecting the boat, Rauparaha said that he had always wished it to be taken away, for as long as it remained it would be a bone of contention between them. He said he had not much influence but sent one of his men with a letter to Porirua desiring it to be given up without payment, and we parted.

I sailed on Sunday afternoon for Porirua and next morning went onshore with Major Richmond and others, the Pinnacle following. The boat was given up and the natives there in number about 280 launched it down to the water and it was towed of [] [] [] and we sailed for Nelson and anchored there the same evening.

Next morning the 10th we landed and found the people in a very great funk. They had built a battery and had erected a wooden place for the women and children to go to when attacked. On the Saturday previous Mr [Ray?] the clergyman had been applied to by a party in the place not to permit the Natives into the church which was properly answered. On the 11th we crossed over in Mr Carkeek's boat with him to the pa at Motuweka, Captain Best and the Maori accompanying us. Here we found no person of consequence, no canoes. A secondary chief and landholder, soon after came and Mr Clarke explained to him the nature of the proclamation etc. There was no sign of preparation – any more than at Porirua, which (last) had been stated in the newspapers to be well fortified altho' there was not a stick put up for defence.

On the 12th I went with Major Richmond, Mr White Captain Best and Witi, the native, to Wakapuaka where there was reported to be a large collection of canoes assembled. We found three there and about five times that number of natives. Witi would not condescend to be more than civil to any of them, holding them very cheap.

Being now convinced with my own eyes that there was no cause of alarm on the part of the settlers at Nelson or Wellington, after a meeting of the Magistrates at Mr White's on the 13th I met the settlers or a deputation of them at the reading room according to their request. I began by telling them that I believed they were under a mistake as to the nature of my powers – that I had brought the troops then on board, for the sole purpose of the preservation of the lives and properties of British subjects, that they were on no account to be landed for any other purpose, that I had satisfied myself that they had nothing to apprehend from the Natives and I should in consequence return to Sydney with them, seeing your Excellency on the way. I was then asked by Dr Munro I believe, whether I should not consider myself justified or right in landing the troops for the purpose of enforcing the laws? I said certainly not. Not if a Magistrate the representative of the Governor desired it? I answered that I would do nothing contrary to my own judgment, that I had no civil authority whatsoever, and I should not land a man of them for any Magistrates. Someone quoted a Law authority, and having no more to say I left them. Major Richmond remained to be questioned. When all was over we returned to the ship and yesterday morning sailed from Nelson.

The feeling uppermost in their minds is Revenge – and that word was used by one, a gentleman in the place. One of the persons who composed the meeting hoped to live till the day arrived when a Maori might be shot like a dog. He was answered very well by Capt. Best who was at the Parsonage where the expression was used. At Port Nicholson a person was heard to declare he would give £20 to be on a jury that tried the chiefs – and in these places, it appears to me, that a feeling of revenge exists beyond any other, and justice could not be expected in either place. In Nelson they want force, not to resist the Natives but to controul themselves. 300 ill disposed labourers in the service of the Company require controul. The settlers of higher class require controul and if anything does take place it will be these labourers rising and taking possession of the fort they have made and so make their own terms.

Whatever is to be done in the case of Te Rauparaha and Rangiaeata I know not. I believe that a forcible arrest of either would lead to a rising of all the natives on both Islands, which could not be easily quelled. I think that something positive should be done or determined upon respecting the survey of the Wairau district, for when we arrived at Nelson it was still in progress, and we warned Mr Parkinson of the heavy responsibility he took in continuing it, and after speaking about his pay – said he would recall his men and they have been for the present recalled. He said he had no orders from Captain Wakefield to discontinue it, but after the unfortunate business there took place, he had been directed, not to go on immediately with it, but to wait and after a time continue it. Mr White declares that it is settled in his agreement that if he is interrupted by orders, or by the Natives from the work, he is to be paid as if it had been performed, at least so I understood him.

For my own part I can not help looking at Van Diemens Land, cleared of its original inhabitants, and the atrocities which are continually practiced by the Settlers in New Holland, towards the Natives there, and believe that with not a close eye upon those now settled in this country, the same will take place here. The Natives are not to be frightened, or got rid of so easily as those of New South Wales, but I do fully believe that the letters which Major Richmond showed me, which led to my going to Nelson – were the result of reports raised solely [sic] for the purpose of raising a general cry against them and that they thought I was fool enough to join in it, and with the Marines seamen and detachment of the 80th commence a war of extermination. To their disgrace, and the disgrace of the name which their settlement bears, they had the meanness to propose to Major Richmond for him to authorise their sending a report to Akaroa to request the French ship there to come up to protect them.

So far as I can judge I have found Mr Clarke to be in judgment much superior to what his age would promise – and Mr Hatfield is doing work at Waikanae which does the highest possible credit to his Religion and country. This is a long letter which I hope you will be able to make out – Pray remember me kindly to Mrs Shortland and believe me to be my Dear Sir
Very faithfully yours
Everard Home

Minutes of Discussions between Spain, Clarke, and others, with Te Rauparaha, Te Rangihaeata, and others, Taupo Pa, 8 March 1844. (Annexure in Reports by Commissioner of Land Claims on Titles to Land in New Zealand, Command 1846/203, reprinted in BPP/NZ, vol 5, pp 29-31):

Taupo, near Parramatta [sic]
Porirua, 8 March 1844.

At a Court held before Mr Commissioner Spain this day –

Present: - Mr George Clarke, jun., Mr. Forsaith, Baron Alsdorf. Messrs. Hewlings, David Scott, William Rea, and other Europeans; Rauparaha, Rangiaiaata [sic], Puaha, and about 200 natives.

The Commissioner addressed them as follows, Mr. Forsaith interpreting sentence by sentence:

Rauparaha, - When I received your letter last Friday, expressing your desire that I should come at once to you and Rangiaiaata to settle about the Port Nicholson purchase, I immediately wrote you a reply, stating that I acceded to your request, and would come here with Mr Clarke and Mr. Forsaith on Wednesday last. I came according to my word, and arrived at Parramatta on Tuesday last, and I am glad to meet you and Rangiaiaata here, and hope we shall arrange the matter justly and fairly to all parties.

The Queen of England, taking a deep interest in the welfare and prosperity of Her subjects the Maories, and being determined to administer equal justice to the Maori and European race, sent me out here to examine into and decide all disputes about land between you and the Europeans.

I have most carefully and impartially examined and considered all the Maories have had to say, as well as the Europeans, about the sale of Port Nicholson, and I am prepared to make my decision, which must be binding and conclusive upon all parties concerned; and when once given cannot be altered.

I have decided that the Natives who owned the land described in the Port Nicholson deed are entitled to a further payment.

Mr Clarke has been appointed to be your protector, to watch over your interests, and to see that justice is done you. It is his particular province to decide the proportion of the payment that you are to receive for the lands comprised in the Port Nicholson deed, and perhaps it will be better for you to talk the matter over with him first, and when you are agreed, I will hold another Court, and finally decide. Listen to what Mr Clarke says to you; he will tell you what is best for your own interests, and when you are ready to meet me again, let Mr. Clarke know, and I will come.

Your paha, cultivations and burial grounds have been reserved for your use, in addition to the native reserves. There is plenty of land left for you, besides that which has been sold to the Europeans, so that both races can live peaceably and quietly together as subjects of the Queen of England. I have no interest whatever in any of these lands, and was sent here on that account, so that my decisions might be disinterested and impartial.

When Europeans purchased Port Nicholson, they did not wish to take possession of it all, and drive you away. No, my friends, that would have been very bad; but they reserved lands for you as well; and the capital and labour brought here by the white men will make the land left for you four times the value it was when they came.

Let all angry feelings cease between us, and let us live like one people.

I repeat, listen to what Mr. Clarke has to say; he will fully explain all about this matter, and how much you will be benefited by taking the payment now offered to you; he will also listen patiently to all you have to say, and when you have done your talk, I will come again; but I hope you will not keep me long, as I have been waiting here ever since Tuesday, and I am much wanted in many other places, to settle about the land. So decide quickly; and now, my friends, good bye.

The Commissioner then left the paha, and all the Europeans present, at his request, followed him, except Mr. Clarke, who was thus left quite alone with the Natives.

(signed).

Wm. Spain

Commissioner

Mr Forsaith, after returning with Mr. Spain to Parramatta, rejoined Mr Clarke, and they used every effort to persuade the natives to accede to the terms offered, reasoning with them till late in the evening, but without success. In the morning (March 9) they again renewed their arguments; but finding the natives deaf to all their proposals, Mr. Forsaith despatched a message to the Commissioner, who had requested he might be sent for when the determination of the natives should be known. On his arrival, the Commissioner addressed the natives as follows:

“I have come, according to my promise of yesterday, when I told you I should leave to talk the matter over amongst yourselves and Mr. Clarke, and return again to hear the determination you had arrived at. I expected to receive a message from you this morning, but not having done so, I am now come myself to know your decision.”

Rauparaha desired Mr. Spain to apply to Rangiaiaata for an answer. Mr Spain said, “No; it was in consequence of your letter that I came, and I expect an answer from you. It is with you I am come to discuss the matter.”

Rauparaha said, “My letter referred to my claim upon Port Nicholson, and I am ready to negotiate this matter; but you now want me to give up the Hutt.”

Mr Spain replied, “I came here for the express purpose of satisfying your claim upon Port Nicholson, and have decided that you are to receive £300, and you know that that the Hutt is included in that district.

“Did not Mr. Clarke converse with you on this subject at Waikanae, and did you not consent to the terms proposed? I am very much surprised that, after coming here at your own request, you should now refuse to accede to the proposals of your friend and protector, Mr Clarke.”

Rauparaha said, “I understood I was to have a payment for Port Nicholson, and I am now ready to receive it. I had no idea you meant to include the Hutt; if I had so understood Mr. Clarke at Waikanae, I should have told him then that I would not consent.” Mr Spain asked Mr Clarke if he had not conversed with Rauparaha on the subject of receiving compensation for his claim upon the Hutt, and the removal of his party from that river.

Mr Clarke answered, that he had spoken of his claim under the general term of Port Nicholson; but that the Hutt was clearly understood to have been included.

Rauparaha said, "I consider Port Nicholson to mean all the land seaward of Rotokakahi, but that beyond Rotokakahi would be retained by the natives."

Mr Spain replied, "The boundaries have already been fixed by Mr Clarke, after the most careful consideration, and I can by no means listen to any proposals for altering them. If you wish, they shall be read over to you again."

Rauparaha said, "I will not hear of any boundaries that include Rotokakahi. The natives who reside on the spot will by no means consent."

Mr Spain replied, "I am quite aware of the cause of your making this objection. That man (Taringa Kuri, who was sitting near to Rauparaha), told me that he had no claim on the Hutt, and promised to leave it after he had taken off his crop; he also said, that he was only sent there by you to keep possession until your claim was satisfied; and now I ask you, if you have not, within the last 24 hours, told Kuri, that if you chose to sell the land, you would turn him off that, as he had no right there, he must go to his own place."

Rauparaha said, "It belongs to Taringa Kuri; he is the elder man of the resident natives, and that child (pointing to a boy who was present) is the real chief of the place."

Mr Spain said, "If you continue to reject my offers, I am sorry; but be assured that boundaries already fixed upon must be considered final; and the sum awarded (£300) will not be increased. Mr Clarke has been specially appointed to arrange these boundaries, and they have been fixed, after much careful deliberation; and I have decided that the sum offered is just and equitable, and more than you are really entitled to."

Rauparaha said, "I cannot interfere, and Rangiaiaata will not consent to your proposals." Mr Spain replied, "Then why did you send for me? Have you not often said you would abide by my decision, and asked me to interfere and get things settled for you? Do you not recollect what you said to me at Waikanae, 'I am now a Christian and I want peace?'. I have done all I can for you; I have no interest in the question."

George Clarke Jr to George Clarke Senior

qMS-0649

ATL Wellington (originals in Hocken Library, Dunedin).

1 April 1844

Wellington, 1 April /44

My dear Father,

I thank you very much for your private letter of the 10th ultimo and the kind manner in which you have expressed your approval of my public conduct here – next to that of my own conscience I value the good opinion of my parents. My views as to the reasonableness of my being transferred to another district are not in any way altered since I first mentioned them to you. I saw however very clearly that had my removal taken place at a time when public feeling was so violent against me that I should have had to endure what I could bear so hardly – the taunts, sneers and triumphs of those to whom I have rendered myself obnoxious by the conscientious discharge of my public duties. That obstacle is now removed and I am only waiting for Forsaith's decision. I should be sorry to become the means of forcing him into a measure contrary to his inclination or advantage. Tomorrow his mind will be made up. I am still anxious to leave but it will not be without some sacrifice of feeling. It is painful to leave my poor natives for whom I have struggled so hard.

You will have heard from the Governor of the arrangements we entered into with the New Zealand Company's Agent for the compensation for the unsatisfied native claimants in this district which we have settled all except the Hutt district and two or three places of little importance. We went to Porirua where we had a korero with Te Rauparaha and Rangihaeata to whom I had awarded the sum of £300 – for their claims to the Hutt but they quarrelled about the amount and our negotiations ended without coming to terms. I have twice heard from authority in which I place the utmost reliance that it is in a great measure through the influence of the Europeans. The natives were told by one person that the sum I awarded them would not purchase an ordinary house in Port Nicholson, by another that the whaling [] each made ten times the amount in one season, by another, that their claims on the Hutt were worth

£10,000 and one person told them that they were worth at least £100,000. What can the object of these people be? Are they not doing all in their power to throw obstacles in our way? [line missing on photocopy]. Can we be surprised at the conduct of the natives? Is it my fault or will it be the fault of the Government if we fail in our ultimate object? When we have to fight in the very teeth of so muc opposition?

Evidence of Captain John Henry Wilson, I.N., to the House of Commons Select Committee on New Zealand, 27 June, 1844, (In IUP, GBPP(NZ), New Zealand, vol 2), 210-217

Viscount Howick, in the Chair.

Captain *John Henry Wilson*, I.N., Honourable East India Company's Service; called in, and Examined.

Mr. *Hope*.] I believe you are in the East India Company's Service? – I was. [211].

And you are now on the retired list? – I am.

When did you go to New Zealand? – I arrived at Nelson, in New Zealand, in April 1842.

You went there as a settler? – I had not decided whether I should remain there, or not. I purchased land, and went to see the country.

You remained there how long? – About fourteen months.

Did you then determine to leave? – I determined to return after I had been there, perhaps, two or three months.

Why? – It was not exactly the thing I expected.

What was the date at which you determined to return? – I cannot say positively the date, but it soon after I saw that there were difficulties which I had not expected.

When was it you made your preparations to return; was it immediately before the Wairau affair? – Yes; but I made the preparation as soon as an opportunity offered. I decided I should return a few months after I had been there.

Will you tell the Committee what you know relative to that affair at Wairau; what was the first you heard of it? – The first I heard of it was this; I was in Brook-street Valley, which is part of the town allotments of Nelson, one of the valleys extending to the southward; I went there to see a place that Mr. Richardson, (one of the gentlemen killed at Wairau) was clearing there, and a cottage he was building, that I might tell his friends, if I saw any of them, what he was about. This was on the Sunday morning; it must have been the 10th, I think, or about that.

Chairman.] Of what month? – June; in fact, we embarked for Wairau on the 12th, and this was the preceding Sunday, I think.

Mr Aglionby.] One thousand eight hundred and forty-three? – Yes; Captain Wakefield came there. He mentioned that Mr Cotterell had arrived from the Wairau; and in the course of conversation he said that which led me to believe he intended to bring the case before the magistrates; and indeed, he said it would be a good opportunity to proceed, in the Government brig, to apprehend these people. A conversation passed, which I cannot now recollect verbatim, in which I did not exactly take the view of the matter that Captain Wakefield did.

Mr. *Hope*.] You had yourself taken your passage, had you not, in the Government brig? – I had, on the Saturday.

For Auckland? – Yes.

What was the next that you know of the circumstance of the party going to Wairau? Was it that the destination of the Government brig was changed, and that instead of going direct to Auckland, it was decided to go round to Wairau? – Yes, I met the captain walking down to the port, stating that he had received a requisition, to convey a party to the Wairau.

In fact, you did embark with the party when they went to Wairau, you intending to go on from Wairau to Auckland? – Yes; I embarked, indeed, the day before then.

What was the view taken by the different parties in the discussions during the voyage, as to the proceeding which they had embarked in? – These were all private conversation which took place at the table.

I do not ask the opinions of individuals, but what was the general view of the one side and the other? – A discussion took place jocularly, but the impression generally, on the part of the party, I should say, and I know it was so, with regard to Captain Wakefield and Mr Thompson, was, that they had no idea of meeting with resistance.

Mr. *Roebuck*.] They had no idea that they would be resisted? – No.

Mr. *Hope*.] What was your view? – I did not think that those two chiefs, Raupero and Rangiaiaata, would surrender themselves; that had always been my opinion.

Why was it your opinion? – Because I have had to do with people very little better in point of civilisation than the New Zealanders, except in the single matter of cannibalism; the natives of other places, who are very little more civilized.

Do you mean that, from your general knowledge of the character of those sort of persons, you did not think they would allow themselves to be arrested? – From my general course of experience, as a servant of the Company in India, I thought [212] that they would not surrender or submit to the degradation before their followers, of giving themselves up; I did not think they had sufficient respect for or knowledge of our law to do that.

In consequence of those opinions, did you land? – I did not; I avoided landing with the party.

After the party landed, what was the next thing you heard? – After they landed, we waited with some anxiety until the second day, when the first thing that occurred was the sound of a boat coming alongside, pulled by two persons, and two persons sitting, one of them evidently wounded; this was the afternoon of Saturday.

What did you do? – Shortly after, another boat came from another part of the bay, with Mr Tuckett and a number of other persons in the boat, eight or ten, and they were all extremely excited; we then decided on sending what boats we could from the vessel, to scour the beach in different directions, to ascertain if there might be any other fugitives, and I myself went in one of those boats.

Did you obtain any local knowledge of the upon the spot as to the circumstances of the transaction? – Only about 12 on the day of the massacre, but unconscious it had occurred, I went with the Captain of the ship to the mouth of the river, and looked at the pah, and returned: this was a short time previous to the appearance of the first fugitives.

Was there a pah there? – At the entrance of the river.

Chairman.] Close to the sea? – Within a few yards of the sea; but this was a deserted pah.

Mr. *Hope*.] When you went with the boat, what did you do? – Pulled down close to the mouth of the river.

When you went down in the boat, where did you go? – To the entrance of the river; it was then dark, but we had seen figures moving when I left the brig at the pah, and we were not certain whether they were some of our own party or natives. I did not wish to get inside the surf, but we were so near it, we could give the Australian call, and we did this with the view that if there were any of our people they might reply. There was no answer given to it, and we remained a few minutes off the pah, and then pulled off the beach and returned to the brig. I may explain, that it was ascertained afterwards, by the evidence, that the persons that we saw were some of the native party, who must have left that very mouth of the river about ten minutes after I left, so that I did right in not landing, for if I had done so I should have been among them.

Do you anything of the transactions further, except what you collected by hearing the evidence taken, which was subsequently reduced into depositions? – Nothing more than what was given in deposition, and in conversation with the parties who had escaped.

[questions on Port Nicholson and Auckland harbours omitted.]

[213.] Mr. *Aglionby*.] At the time when the information was laid before the police magistrates against Raupero and Rangiaiaata, what police force was there stationed there? – I cannot speak positively to that; but I should think the whole force could not exceed four or six constables.

Then, if the civil power determined to execute the warrant, was it necessary for them to call in some of their fellow-citizens? – I should think it was, decidedly.

They had no military with them, only constables? – Only constables and labourers.

The peculiar character of Raupero and Rangiaiaata was not so well known in that south part of the island as it was in the north? – Perhaps not, but still they were notorious.

Are you aware that on a former occasion, where the civil power interfered to prevent some aggressions of natives, they went with a few constables, and the native chiefs yielded? – Yes; there was an instance at Massacre Bay of an individual.

That was a place in which surveyors had been impeded in some measure? – It was men working coal; they had been interrupted; their stages and apparatus for working the coal had been broken down.

And, in fact, the police magistrate there did feel called on to interfere; and there were no bad consequences? – Yes; he went there, and held a court, and fined the man half a sovereign.

And there was no complaint made on the part of the natives after that? – No.

You are understood to state distinctly, that during the voyage the the general feeling with the police magistrate and the other gentleman was, that there would be no fight; that it was rather a show of power than anything else? – Yes.

There was no expectation of any violence? – No; that was the strong conviction they had; and I have no reason to know that that also was Captain Wakefield's notion; he quite scouted the idea of it. When Raupero and Rangiaiaata visited Nelson, some eight weeks before this very occurrence took place, there was a korroro [sic] held, and they came there to get more presents, I believe. This object was to get something.

A korroro is a discussion, is it not? – Yes.

And what happened then? – A korroro was held, at which I was not present, from mistaking the hour; but I met Captain Wakefield coming into the town; they had both now become habitual drunkards; Rangiaiaata the most so; Rangiaiaata the most so; standing at the doors of the punch-houses, the expression they used was, that they would bung-a-bung Wakefield, that he should not have the Wairau. I made some observation, that they should not be allowed to go about in that manner, and that it was a pity that we had not a militia organized. Captain Wakefield's answer was, that he was only a bully; that there was nothing in him; and at various times conversations passed to that effect, from which it was clear the impression on his mind was, that they would never resist; that I am convinced of.

You knew the lamented Captain Wakefield? – Very well. My acquaintance with him commenced shortly before I went to New Zealand, and was uninterrupted.

Grey's Report to Lord Grey (Colonial Secretary) on the Porirua and Wairau Purchases, 26 March 1847, Mackay vol 1., 202 (original on CO 209/51, CFRT Te Tau Ihu DB 1484-1505, printed in Papers Relative to the Affairs of New Zealand, Cmd 892 (1847) 7-9, IUP(NZ) vol. 6):

**Government House,
Auckland, March 26 [1847]
[extract]**

The land claims which appeared in the circumstances of the Colony to require immediate adjustment were those advanced by the New Zealand Company:

1stly to the District of Country including Porirua and lying between that place and Wainui;-

2ndly to the District of Wairau in the Middle Island, and the Country lying immediately to the southward of that District.

In both of these districts the Company had actually disposed of large quantities of land to European Settlers whom it was of course desirable if possible to place in possession of the Sections which they had purchased, and moreover from a military point of view, the possession of a great part of the Porirua District and its occupation by British subjects was necessary to secure the Town of Wellington and its vicinity from future hostile attacks and aggressions from evil-disposed Natives; as it was only by the occupation of the Porirua

District that the various tracks leading across the woody mountains between Porirua and Wellington could be effectively closed against an enemy.

The claims of the New Zealand Company to the Porirua and Wairau Districts had not only been decided upon by Commissioner Spain as against the New Zealand Company; but after disallowing the claim of the Company to these Districts, that officer had further reported that the District lying between Wainui and Porirua, inclusive of both places, must be regarded as being within the actual and bona fide possession of the Ngatitua Tribe, and that a District of country in the Middle Island, comprising the Wairau and a part of Queen Charlotte Sound, "must likewise be regarded as being in the real and bona fide possession of the same tribe". This latter decision really gave a claim to the Nga-ti-toa Tribe to a tract of country in the Middle Island extending to about one hundred miles to the south of Wairau, as their claim to the whole of this territory is identical to their claim to the Wairau.

Under such circumstances I determined to purchase on behalf of the Government, from the Nga-ti-toa tribe, a large district of land surrounding Porirua, including as much of the land which had previously been disposed of by the New Zealand Company, as I could induce the Natives to alienate, thus meeting, as far as practicable, the specific claims of the European settlers, and in addition to the Land so acquired by the New Zealand Company, I determined to include, within the limits of the purchased land, a very extensive block of country to meet the probable prospective requirements of the Government and the settlers,

The Ngatitua Tribe, after securing an extensive reserve for themselves in one continuous block (as shown on the enclosed plan) agreed to dispose of the tract of Country I required (which is also shown in the enclosed plan) which included the whole of the sections the New Zealand Company claimed, with the exception of about sixteen. As Lt. Col. McCleverty had been directed by Her Majesty's Government to decide upon the reasonableness of the price paid to the Natives for land, and as he was then at Wellington, I thought it right to take his opinion as to the sum that should be paid for this tract of land. He named the sum of £2,000, which, under all the circumstances of the case appearing to me to be a reasonable and proper sum, I agreed to pay it to the Natives, arranging that one half of the sum should be paid down on the first of April then next following, and that the sum of £500 should be paid on the first of April 1848, and a like sum on the first of April 1849.

In reference to the Wairau district, I thought it advisable to not only to purchase this District which is estimated by the Surveyor General to contain 80,000 acres of the finest agricultural land and about 240,000 acres of the finest pastoral land; but also to endeavour to purchase the whole tract of Country claimed by the Ngatitua tribe; and extending about 100 miles to the Southward (i.e. standard miles) of that valley, the greatest portion of which Country is, I understand, admirably adapted to European Settlers and is likely to be almost immediately occupied by sheep and cattle, as I thought that an immediate and decisive arrangement of this kind would be excessively advantageous to this Colony.

The Ngatitua tribe, after considerable discussion, agreed to dispose of the required territory, - still reserving their claims to that portion of the Country which is shown on the accompanying map.

Upon consultation with Colonel McCleverty, I agreed to pay the Natives (who demanded the sum of £5000) £3000 in five annual instalments of £600 each. The first instalment £600 to be paid on the following day, whilst the remaining instalments of £600 each are to be paid on the first of April in each of the four next succeeding years.

Having completed these arrangements, I directed Major Richmond to write to the Company's Agent to inform him that the New Zealand Company might, in conformity with the regulations made under the sanction of Your Lordship's Department, select such portions of land in the two districts thus purchased, as they might require to fulfil their engagements with the settlers, it being understood that they should repay to the Government for the land they might select for as a proportion of the total purchase money, as Her Majesty's Government might on being informed of the arrangements I had made, direct to be refunded as a proper and reasonable payment.

I trust that the arrangements I have made for the purchase of these two tracts of Country will be satisfactory to your Lordship. Every land claim but one, in the Southward of

the Colony, which is likely to occasion any further discussion or disturbance has been disposed of. The principles which I have adopted of annual payments instead of giving at once large quantities of merchandise will, I think, have a powerful influence on the general advancement, of the Natives in civilization. They already are making rapid and unexpected strides in the arts of civilized life, and the funds thus supplied them will materially assist their advancement, whilst the experience of each year will render it probable that every successive payment will be more judiciously applied, and there can be no doubt that the fact of the Ngati Toa tribe receiving for several years, an annual payment from the Government, will give us an almost unlimited influence over a powerful and, hitherto, a very treacherous and dangerous tribe.

As the great majority of the land questions which had formed subjects of dispute and discussion have now been disposed of, and as the Natives have now become accustomed to Europeans and understand that the laws and regulations of the Government must be respected and obeyed, there is no doubt that now the uniform system of purchasing from them such districts in their bona fide possession as may be required by the Government, is adopted, that no further disputes or disturbances on the subject of land, will take place throughout the southern portions of New Zealand.

I have the honor to be My Lord Your Lordship's most obedient & Humble servant
G GREY

William Wakefield to Richmond, 25 March 1847, enclosure on CO 209/52, CFRT Te Tau Ihu DB 1454-72; also printed in Cmd 892/1847, *Papers Relative to the Affairs of New Zealand*, 1847, in IUP, GBPP/NZ, vol 6, 17-18.

Wellington, March 25, 1847

Sir,

I have the honour to acknowledge the receipt of your letter of the 23rd instant, enclosing the tracing of two blocks of land, including Wairau and Porirua, recently purchased by the Government, and acquainting me that Crown titles will be issued to the New Zealand Company for any lands I may, under the usual regulations, select in those districts.

You, at the same time, acquaint me, that it must be understood that the New Zealand Company will repay such portion of the respective sums paid for the land so selected as may be required by the Home Government.

I have to request you to make my acknowledgments, on the part of the New Zealand Company, to his Excellency, for the cordial assistance afforded by him to the Company to secure the districts necessary to fulfil their engagements and pursue their colonizing operations, as evinced in his late proceedings.

Nevertheless, I feel it my duty, while bowing to his Excellency's decision, to respectfully express my regret that the Company should be rendered liable for the payment of large sums of money, under the circumstances of the recent acquirement of land.

The land offered to the Company in the Porirua district, in exchange for 16 sections that have been surveyed, selected by purchasers from the Company, and been the subject of numerous contracts and engagements, and are now reserved for the natives, is not known to contain any merits, either of quality or position, to render the choice of it available for the purpose of effecting an exchange for that kept by the natives. And if the owners of the sections so retained should, as I cannot but consider probable, decline to accept such an exchange when proposed to them, the Company would be paying largely for but a partial settlement, at this day, of a question that has been for years in abeyance. And, contemplating this, I stated to his Excellency, in the conversation in which he verbally acquainted me with this arrangement, that I should feel it my duty to protest against the award of Mr Spain, on which, I presume, the Government have proceeded, so as to relieve the Company from responsibility to the owners of the sections, which the Crown, by its own act, had thus taken out of their possession; but the payment of £3000 for the block on the other side of the Straits presents a graver objection than in the case of Porirua. It would not, perhaps, become me to question the propriety of that arrangement if his Excellency had been pleased to take upon

himself the responsibility of it, or had only required the Company to reimburse the Government in respect of such land as they might select outside what may be called the Wairau district; but when I find not only that district included as part, for which a very large sum of money is paid by the Crown, but the Company desired to pay the proportionate amount for it, I cannot but remind his Excellency that the Company's claim to the whole district has never even been investigated, as the late Commissioner of Claims, Mr Spain, has publicly admitted in his official report, and respectfully, but earnestly, submit that the payment of this sum, not to resident natives in actual enjoyment of the land, but to the very men who savagely murdered our countrymen at Wairay now nearly four years ago, is tantamount to a declaration of the invalidity of that claim without investigating it, and, therefore, to a justification of the perpetrators of that dreadful tragedy. I cannot but contemplate that, after all the struggles the Company have made to vindicate their claim to the Wairau, and the memory of those who fell in supporting it against unlawful violence, they will regard in the same light the arrangement which his Excellency has been pleased to make; and as I had, unfortunately, not the opportunity of expressing that opinion directly to his Excellency before the conclusion of the arrangement, I feel bound not to receive the official communication of it without placing on record the view I believe they will take of it.

Before concluding, I must take the liberty of remarking on a point of considerable importance not alluded to in your letter. In acquainting me, verbally, with the arrangements now detailed by you, I understood his Excellency's statement to be, that the Company would be called upon to make repayments, in *money or land*, for the lands to be chosen by them out of the blocks purchased by the Crown, and that, therefore, it would be left to the Secretary of State for the Colonies and the Company to determine jointly which mode of repayment should be adopted. As no allusion whatever is made by you to this alternative, I should be obliged by your acquainting me whether his Excellency has made any communication to you respecting it.

I have & c.,

W WAKEFIELD,

Principal Agent of the New Zealand Company.

Despatch of Governor Grey to Earl Grey (Colonial Secretary) on the Porirua and Wairau Purchases, 7 April 1847, printed in Papers Relative to the Affairs of New Zealand, Cmd 892 (1847) 14-17, (IUP(NZ) vol. 6):

Government House,

Auckland, April 7 [1847]

My Lord,

IN my Despatch No. 28, of the 26th ultimo, I reported the arrangements I had concluded for the settlement of the land questions in the districts of Porirua, and in the Middle Island. I did not, until this morning, receive the accompanying letter on this subject, which was addressed by the New Zealand Company's Principal Agent to the Superintendent of the Southern District, upon the 25th ultimo.

In his letter, a copy of which is enclosed, the New Zealand Company's Agent states as follows, in reference to the Porirua District:

“The land offered to the New Zealand Company in the Porirua District, in exchange for sixteen sections that have been surveyed, and which have been the subject of numerous contracts and engagements, and are now reserved for the natives, is not known to contain any merits, either of quality or position, to render the choice of it available for the purpose of so effecting an exchange for that kept for the natives; and if the owners of the sections should, as I cannot but consider probable, decline to accept such an exchange when proposed to them, the Company would be paying largely but for a partial settlement at this day of a question that has been for years in abeyance; and contemplating this, I stated to His Excellency, in the conversation in which he verbally acquainted me with this arrangement, that I should protest against the award of Mr Spain, on which I presume the Government have proceeded, so as to

relieve the Company from responsibility to the owners of the sections which the Crown had thus, by its own Act, taken out of their possession.”

Upon the foregoing paragraph I have to remark, that I do not think that the Crown could admit that this question was in what may be termed abeyance. The Company originally claimed to have purchased the Porirua district, and proceeded to sell it to Europeans. In taking this step, I have no doubt that they considered their title a good one, and from what I have seen of the manner in which the natives in the south of New Zealand dispose of their land, and of the characters of some of the natives in that particular district, I must frankly confess that I should doubt the sincerity and fair dealing of the majority of the Ngatitua tribe in any question of the kind.

But Her Majesty’s Government sent out from England a Commissioner to inquire into these titles to land. The natives of the Porirua district, who were almost entirely unacquainted with our customs, submitted to the Queen’s authority, by appearing before Her Commissioner, to support their claim to the district, and the Commissioner made two decisions in this case:-

1stly. To the following effect.

“And therefore I, William Spain, Her Majesty’s Commissioner for investigating and determining titles and claims to land in New Zealand, do hereby determine and award that the New Zealand Company is not entitled to a Crown grant of any land in the district of Porirua.”

2ndly. The Commissioner determined that the country on the North Island, [15.] from Wainui to Porirua, was in the real and *bona fide* possession of the Ngatitua tribe.

These decisions had both been communicated to my predecessor,¹⁰⁰³ who appears to have acquiesced in them, and the natives have, up to the present time, remained in undisturbed possession of the land. It is, therefore, I think, clear that the Crown will, by my act, put the Company’s purchasers in possession of lands, and not take lands out of their possession as stated by the Company’s Agent.

Under the circumstances above stated, I felt that I could not, as Governor, either legally or properly interfere with the decision of a properly qualified Court, which decisions had been communicated to the authorities, and were recognized long previously to my arrival in the country. Indeed, this was one of the very claims upon which my predecessor reported to Lord Stanley that it could not “be fully occupied by settlers under the existing circumstances of the colony until very large additional payments have been made, with great care, much time, and an amount of difficulties that few will encounter.”

In reference to the details of the purchase of the Porirua district now objected to, I will only remark on two other points.

1stly. The amount paid as purchase money.

2ndly. The extent of land acquired.

Upon the first of these subjects, I beg to state, that Lieut.-Colonel McCleverty was sent out by Her Majesty’s Government, partly to judge of the reasonableness of the terms of any purchase which the Company might make from the natives with reference to the Company’s right to reimbursement in land in respect of monies paid for such purpose. I therefore took his opinion upon this point, as I thought I ought to do, and he stated that he considered the natives entitled to the sum of £2000 for the land they were about to surrender in the Porirua district. I, upon reflection, saw no reason to differ from this opinion, and therefore agreed to pay this amount.

Upon the second point, viz., the extent of territory acquired, I beg to offer the following remarks:-

The Company (as nearly as I can ascertain) claimed, in the Porirua district, 270 sections of land, a great number of which had been sold to Europeans. Under the arrangement I have made, I have secured for the Company all these sections with the exception of about

¹⁰⁰³

That is, Governor Fitzroy.

16. These 16 sections the Company are still at liberty to purchase from the Natives if the natives will dispose of them to the Company, which I doubt, as they would not sell them to the Government. In addition, however, to the surveyed land now purchased by the Government, there is a large tract of unsurveyed land, from which the Company are free to select any portions they think proper. I thought, therefore, that I had concluded a most advantageous arrangement for Her Majesty's European subjects; I can, at least, say it was the best I could make.

In reference to the remarks which the New Zealand Company's Agent has made in the enclosed letter, on that portion of the arrangement which relates to the amount to be paid for the district of Wairau, viz:

"I cannot but remind His Excellency that the Company's claim to the whole district has never even been investigated, as the late the late Commissioner of Claims, Mr Spain, has publicly admitted in his official report, and respectfully, but earnestly, submit that the payment of this sum, not to resident natives in actual enjoyment of the land, but to the very men who savagely murdered our countrymen at Wairay now nearly four years ago, is tantamount to a declaration of the invalidity of that claim without investigating it, and, therefore, to a justification of the perpetrators of that dreadful tragedy."

I beg to remark, Firstly in reference to the unfortunate fate of those who fell at Wairau, that I do not think any act of mine would justify the New Zealand Company's Agent in putting such an interpretation upon the arrangement I have made, as he has thought proper to do, and I much regret that he should have done so.

Secondly. I must also differ on another point from the New Zealand Company's Agent, for I distinctly understood Mr. Commissioner Spain as having reported that he had investigated the Company's claim to the Wairau district; his language in the report on this claim to land in the Middle Island is, -

"I am compelled to state that I am not prepared to recommend that the district of Wairau be included in the Crown grant to be made to the New Zealand Company in the Middle Island.

I am aware of the peculiar and very delicate nature of *deciding* on this question, involving, as it necessarily must do, a reference to the melancholy occurrence connected with it, which has caused this subject to assume so painfully prominent a position in the eyes of the British Government, - I may add, in the eyes of the British public, - nevertheless I have come to the *decision* expressed above, after much and careful deliberation, after a consideration of the evidence which has been given on the *whole case*, and which I cannot but declare has failed to prove in any way that the district in question was ever alienated to the Company by the parties from whom that body asserts, through its agent, that it has been purchased; and I ascertain no apprehension that a candid and impartial perusal of the evidence will ever lead to any other conclusion."

Subsequently to this decision, and in the same Report, Mr Commissioner Spain states:

"The various districts, then, in the real and *bona fide* possession of the Ngatitooa tribe, are on the North Island, from Wainui to Porirua, inclusive of both places; on the Middle Island, in Cloudy Bay, comprising the Wairau, and a part of Queen Charlotte's Sound; and, in the Straits, the Islands of Mana and Kapiti, and in each and all of these places has the tribe both residences and cultivated lands."

These decisions I understood to have been received and adopted by the local Government nearly eight months prior to my arrival in the colony. I did not, therefore, think that I could legally or with propriety question them: and this, not only on account of the bad impression my doing so would have produced upon the Ngatitooa tribe, but upon the numerous native population throughout the whole islands who, had I adopted such a course, must have lost all confidence in the decisions of our Courts. Moreover, the extent of land now purchased by the Government, in the Middle Island, is so large that, in reference to its quantity and

value, the payment made for it cannot but be regarded as small, and the proportionate amount to be refunded by the New Zealand Company, if the Government should require them to defray some portion of the expense of this purchase, cannot amount to any important sum: however, I have again to repeat in this instance, that I spared myself neither anxiety, exertion, nor care to make the best arrangements I could.

W.F.G. Servantes to Colonial Secretary, New Munster, 27 March 1848 re distribution of payments for the Porirua and Wairau Purchases, 27 March 1848, 1861 AJHR C-1, 247.

Porirua, 27th March, 1848

SIR –

I have the honor to acknowledge the receipt of your letter of the 22nd instant, requesting that I would furnish certain information concerning the purchase of the Porirua District, and in reply, beg, for the information of His Excellency, the Lieutenant Governor, to state as follows:-

1st. The amount of purchase money for that district was £2000, to be paid in three instalments, the first to consist of £1000 (One thousand pounds), the second of £500 (Five hundred pounds) and the third of £500 (Five hundred pounds), which instalments were to be paid on the 1st April 1847, the 1st April 1848, and the 1st April 1849.

2nd. The first instalment of £1000, was paid over by Lieutenant-Colonel McCleverty, (to whom I acted as interpreter on this occasion), in equal proportions to the following ten chiefs. The first eight of whom are also those that signed the deed of sale, the other two being absent at the time of its signature.

1. Rawiri Kingi Puaha,
2. Te Watarauhiri Nohorua,
3. Mohi Te Hua,
4. Henere Matene Te Whiwhi,
5. Tamihana Te Rauparaha,
6. Ropata Hurumutu,
7. Nopera Te Ngiha,
8. Paraone Te Ngiha,
9. Te Waka Te Kotua,
10. Tapui.

3rd. With reference to any subsequent claims that may have arisen, I beg to state that no new claims whatever have been made by any parties to the land sold on that occasion, but that certain natives to whom those chiefs that received the first instalment did not distribute any portion of it, have made a claim to a share of the purchase money, they are as follows:

1. Te Warehau,
2. Hoani Te Okoro,

all the relatives of Martin and Thompson, which claims I consider are valid. Those persons who claim a share of the Wairau purchase money are Te Rau-o-te-rangi, and the relatives of Martin and Thompson, which claims I also consider valid.

In answer to that portion of your letter that requests that I will give any information that appears to me likely to be conducive to such an arrangement of the next payment, as may be most satisfactory, to the largest number of the natives interested, I would most respectfully but strongly recommend to His Excellency that the original arrangements should be abided by, as if once departed from, it will be a precedent for doing so on all future occasions, and Natives who are disaffected or discontented are sure to take the opportunity thus afforded them, of having the purchase as it were, revised, in hopes that by doing so, they may receive a larger share of the purchase money, than they are properly entitled to. Besides the arrangement is satisfactory to the great body of the Natives interested, and the departing from it would possibly cause discontent amongst them, as they have always anticipated that the instalments would be paid in the same proportions as the last.

With respect to those persons who have been overlooked on the portion of the last instalment, I would suggest to His Excellency, that the Chiefs who ought to have given them portion of what they received, should be directed to do so at the time of the ensuing payment, and that such should be done in presence of the person who may be directed by His Excellency to pay over the next instalment.

I have, &c.

W.F.G. Servantes,

Interpreter to the Major-General.

Commissioner Searancke to McLean, 6 July 1859, re Wainui Block, 1861 AJHR C1, 285-6

Sir,

I have the honor to inform you, for the information and approval of His Excellency the Governor, that I have completed the purchase of the Wainui block, West Coast; also the survey, a tracing of which, together with the Deeds, I hand you herewith.

The Wainui block, about 30,000 acres, is a portion of the Waikanae District on the West Coast, having a frontage to the Westward of five and a-half miles, ins principally heavily timbered land and apparently hilly, and about three thousand acres of open fern and marshy land, is valuable from its proximity to Wellington, and being on the road from Wellington to Wanganui. The Reserves appear to be large; but when the number of Natives resident within the boundaries is taken into consideration they could not in justice be made smaller. There are also two pieces of land (tracings of which are forwarded) within the boundaries, conveyed by Deeds of gift to the half-caste children of John Nicol, and his wife Peti; and to Henry Flugent and his Native wife, in consideration of a residence of 28 years among them. I beg to recommend that Crown Grants should be given in these two cases.

The price paid altogether for this block is (£850) eight hundred and fifty pounds.

A small portion only of this land is at present available, the back country being unknown and unexplored. I propose, subject to your approval on the the completion of of the purchase of the Waikanae township block of land, to carry the survey from the West coast to Wairarapa, in order that the surveys of the East and West coasts may be properly connected.

I have, &c.

William N. Searancke

Ngati Raukawa Petition to the British Government, 1880, MA 13/16, National Archives, Wellington (official translation on file)

The following is the petition of the tribes and all the people of Ngatiraukawa Aboriginal Natives of New Zealand, to the Chief Secretary for the Colonies, residing in England.

We the people of Ngatiraukawa residing in the district of Kukutauaki and Rangitikei in the Provincial District of Wellington desire to point out to you, the pains and wrongs we have suffered over the past years.

Firstly, the wrongful sale of our land lying between Rangitikei and Manawatu.

Secondly, the unjust award, by the Court, of that land to Ngatiapa.

Thirdly. The unjust award of our land at Horowhenua to Muaupoko and to Hunia Te Hakeke of Ngatiapa to Hoani Meihana of Rangitaane and Major Kepa of Whanganui.

Hearken. These lands were in our possession ten years previous to the Treaty of Waitangi.

Te Rauparaha was the first to destroy the tribes owning these lands. Afterwards Ngatiawa assisted by some of the subtribes of Ngatiraukawa again destroyed Ngatiapa, Muaupoko, and Rangitaane, and continued to do so until the land was finally occupied by Ngatiraukawa.

When Te Whatanui came to Kapiti on a visit to Te Rauparaha, Te Whatanui first saw Europeans and guns. On the departure of Te Whatanui for Maungatautari, Te Rauparaha in bidding him farewell said, go, and when you see Ngatiraukawa bring them to live upon my land at Whangaehu, Rangitikei, Manawatu and Otaki. When Te Whatanui came with his people to live upon the lands they found it without inhabitants, that is the sea coast. All the people (Nga morehu i.e. remnants) of those tribes that had not been killed had gone to the bush, to the mountain, for fear of Te Rauparaha and his Tribes.

When Ngati Raukawa arrived they went to Kapiti to meet Te Rauparaha. Te Rauparaha said that Ngatiraukawa were to locate themselves between Whangaehu and Kukutauaki – the boundary of Ngatiawa, and were to include Turakina Rangitikei and Manawatu. Some of Ngatitua belonging to Te Rauparaha and Te Rangihaeata also resided with Ngatiraukawa. Te Rauparaha also told Te Whatanui to exterminate all the people of Ngatiapa, Rangitikei, Rangitaane and Muaupoko, that the land ought to be free for Ngatiraukawa and for his own tribe to live upon. Te Whatanui did not consent to those words of Te Rauparaha that the people should be killed. Te Whatanui said he did not consent to kill those tribes but that they must be spared. Te Rauparaha was sad, that Te Whatanui had determined to spare those tribes. Ngatiraukawa then took possession of these lands. Those tribes then came back to Ngatiraukawa on the land and resided amongst them, but having no right (mana) to the land and continued to do so until the arrival of [the] Treaty of Waitangi.

The Revd. Mr Williams (afterwards Archdeacon Williams) brought the Treaty of the Queen in the year 1840. The names of the Chiefs of Ngatiraukawa were signed to the Treaty of Waitangi. Mr Williams said to us that the Queen was to be supreme in this Island, and that the right to deal with the lands would remain with the Natives. It was expressly declared by the Treaty of Waitangi that the right to deal with the lands and Natives would remain with the Natives themselves. He said it was a very good Treaty and would be upheld by the Queen. He said that it was a [] Treaty and that it was a Treaty protecting the Natives. Mr Williams then left leaving with us Mr Hadfield (now Bishop Hadfield) as our minister. We remained in peaceable possession until the year 1848. At that time in consequence of the residence of Europeans amongst us and the fact of their remaining quiet, intermingled with Ngatiraukawa, the thought of those people sprung up that they were Chiefs, and they desired to sell the land.

Mr McLean the Commissioner (afterwards Sir Donald McLean) came to Otaki and asked the Revd. Samuel Williams to assist him in obtaining the consent of Te Rauparaha, Rangihaeata and the whole of Ngatiraukawa to the sale of Rangitikei and Whangaehu by Ngatiapa. Te Rauparaha and Te Rangihaeata were angry.

APPENDIX 4:

Crown, Judicial and New Zealand Company Statements Concerning the Extent of Ngati Toa's rohe

A. Introduction

This Appendix collects together all government and official statements on the extent of Ngati Toa's rohe. This is important as demonstrating the Crown's assumptions regarding Ngati Toa's zone of mana and authority. New Zealand Company statements are included as well, as are judicial determinations (as e.g. in the Wellington Tenth decision of 1888).

B. Crown statements

George Clarke, 1843: Clarke thought of as the core Ngati Toa areas in Te Tau Ihu as "the vicinity of Nelson, Queen Charlotte's Sound, Cloudy Bay".¹⁰⁰⁴

Sir George Grey's Report to Lord Grey (Colonial Secretary) on the Porirua and Wairau Purchases, 26 March 1847, Mackay vol 1., 202 (original on CO 209/51, CFRT Te Tau Ihu DB 1484-1505):

The claims of the New Zealand Company to the Porirua and Wairau Districts had not only been decided upon by Commissioner Spain as against the New Zealand Company; but after disallowing the claim of the Company to these Districts, that officer had further reported that the District lying between Wainui and Porirua, inclusive of both places, must be regarded as being within the actual and bona fide possession of the Ngatitua Tribe, and that a District of country in the Middle Island, comprising the Wairau and a part of Queen Charlotte Sound, "must likewise be regarded as being in the real and bona fide possession of the same tribe". This latter decision really gave a claim to the Nga-ti-toa Tribe to a tract of country in the Middle Island extending to about one hundred miles to the south of Wairau, as their claim to the whole of this territory is identical to their claim to the Wairau.

Donald McLean, 1853:¹⁰⁰⁵

I have the honor to transmit to you the Original Deed of Sale executed by the principal Chiefs and people of the Ngatitua tribe yesterday, for the whole of their claims to the Middle Island excepting Rangitoto or D'Urville's Island and such other places as may be actually required by the Natives... This purchase may be estimated to comprise about one fourth of the whole of the Middle Island, and includes the Arahura or West Coast those portions of the Province of Nelson hitherto the most difficult to acquire from the Natives owing to the numerous conflicting interests of different tribes inhabiting the bays and outlets of Queen Charlotte's Sound, Cloudy Bay, the Pelorus, Wakapuaka and other places... In addition to the Ngatitua Chiefs, *who are acknowledged by the Natives generally, to have the principal claim to those districts* several other influential Chiefs from the Ngatirarua, Ngatitama, Rangitane and Ngatiawa tribes were present and took part with the Ngatitua at the several conferences held with his Excellency respecting the sale of the country...

Donald McLean, 1856: In a report to Governor Browne of 7 April 1856 McLean wrote that "the Ngati Toa tribe of Porirua... had unquestionably as the earliest invaders a prior right to the disposal of the district".¹⁰⁰⁶ (McLean is here referring to the entirety of the Northern South Island.) This "they had never relinquished", although "after the Conquest their leading Chiefs partitioned out to the subordinate branches of their own tribe as well as to the Ngati Awa". McLean believed that even groups claiming a power of sale over the lands they actually occupied and cultivated "when closely

¹⁰⁰⁴ Official report of George Clarke jr., 16 August 1843, *Appendix to the 1844 House of Commons Select Committee Report on New Zealand*, BPP(NZ), Irish University Press edition, vol 2, 337.

¹⁰⁰⁵ McLean to Civil Secretary, 11 August 1853, copy on MA 13/26 17(b), Archives New Zealand, Wellington.

¹⁰⁰⁶ McLean to Gore Browne, 7 April 1856, CO 209/135, CFRT Te Tau Ihu Document Bank 1557-85, at 1562.

examined” nevertheless “always acknowledged that the *general rights of alienation* (emph. added) vested in the Ngati Toa Chiefs of the Northern Island”.

C. New Zealand Company statements

D. Judicial Observations

Commissioner Spain (South Island) (1845): Commissioner Spain believed that some parts of the South Island were undoubtedly “in the real and bona fide possession of the Ngati Toa tribe”. These were the Cloudy Bay area “comprising the Wairau” and “a part of Queen Charlotte’s Sound”. In “each and all of these places the tribe has both residences and cultivated lands”.¹⁰⁰⁷

Judgment of the Native Land Court in the Himatangi Block Claim (claim by Parakaia Te Pouepa and others) (1868):¹⁰⁰⁸

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

Wellington Tenths Case (1888) 2 Wellington MB 99 (Judge Mackay):

The only hapus who would have been justified in making a claim to the the territory sold by the Ngati Awa in 1839 were the Ngati Toa but the only part of the [] [] they preferred a claim to was the Porirua district for which they received a final payment in 1847. It will be seen therefore that although Ngati Toa and the other hapus conquered the district in 18[] that they made no attempt to make a claim against the resident hapus at the sale to the Company in 1839, but allowed them to sell such portions as they considered they were entitled to.

E. Conclusions and Analysis

¹⁰⁰⁷ Spain’s report to Fitzroy on the New Zealand Company’s Nelson claims, Mackay, vol 1, 54-60, at 59.

¹⁰⁰⁸ Copy of Judgment on MA 13/75 [Rangitikei-Manawatu Block], Archives NZ, Wellington. (Otaki, 27 April 1868)

Appendix 5:

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
Keneperu (or Te Keneperu)
Koangaamu
Komangarautawhiri
Korohiwa
Mahinawa
Motuhara
Onepoto
Rangituhi
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
Muhunoa
Ngawhakahiamoei
Ngoungou
Ohau
Ohinkekeo (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)
Pohonuiatare
Raketapauma
Rangatira
Rangitikei
Rangitikei Turakina
Ruanui
Ruatangata
Te Kapua
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