

# Raupatu and Compensation

in the

# North-Eastern Bay of Plenty

1865-1874

John McLellan



July 2020

Report commissioned by the Waitangi Tribunal for the North-Eastern Bay of  
Plenty District Inquiry (Wai 1750)

## About the author

Tēnā koutou katoa. My name is John McLellan. I have worked with the Research Services Team at the Waitangi Tribunal Unit since July 2017, initially as a Researcher Analyst and currently as a Senior Research Analyst. During this time, I have assisted with a number of commissioned research projects, including for the Military Veterans Kaupapa Inquiry and the Porirua ki Manawatū District Inquiry. I have also provided drafting assistance to the Waitangi Tribunal panel. As the recipient of a Postgraduate Scholarship I graduated with Master of Arts in History with Distinction from Victoria University of Wellington in 2018. The thesis for which involved an examination of the soldier-settlers of the New Zealand Wars. Prior to this, my History Honours (1<sup>st</sup>), also completed at Victoria University of Wellington, investigated the support and participation of Māori in the South African War (1899-1902). During my studies I also received two Summer Scholarships, assisting senior academics with their major nineteenth-century New Zealand research projects.

I am a Pākehā historian from Wellington, having grown up in Auckland. I also whakapapa to Ngāi Tamahaua of Whakatōhea, and Te Ngare of Ngāi Te Rangi. However, these connections have in no way impacted my impartiality or influenced the outcome of my research for this report.

## Acknowledgements

Firstly, I would like to thank the claimants and Crown for their valuable feedback on the draft of this report.

This report could not have been completed without the assistance of others in the Waitangi Tribunal Research Services Team. Substantial support was provided by Max Nichol and Brittany Whiley for the historical context chapter, and by Noel Harris who provided the maps. Further assistance was provided by Tui Macdonald, Dr Timothy Gassin, Dr Therese Crocker, Dr Brendan Sheridan, and Jeff Abbott. Many thanks also to Suzanne Woodley, Kesaia Walker, Cathy Marr and Dr Dan Morrow for their support and oversight of the report. E mihi ana ki a koutou katoa.

# Contents

<b>Chapter One: Introduction .....</b>	<b>1</b>
1.1 Project background and commission.....	1
1.2 Claims.....	2
1.3 Methodology and sources .....	3
1.4 Report structure.....	5
<b>Chapter Two: Historical Context .....</b>	<b>6</b>
2.1 Chapter introduction .....	6
2.2 Iwi and hapū overview .....	6
2.3 The Whakatōhea economy .....	14
2.4 New Zealand Wars .....	17
2.5 Influence of Christianity .....	19
2.6 Chapter summary.....	21
<b>Chapter Three: Unrest and Military Response .....</b>	<b>23</b>
3.1 Chapter introduction .....	23
3.2 Part one: The killing of Völkner and Fulloon.....	24
3.3 Part two: Colonial forces in Ōpōtiki, the capture and prosecution of murder suspects .....	37
<b>Chapter Four: Raupatu: Confiscation of Lands.....</b>	<b>66</b>
4.1 Chapter introduction .....	66
4.2 Context of confiscation in the Bay of Plenty.....	66
4.3 The authority for confiscation .....	70
4.4 Why was confiscation introduced to the Bay of Plenty? .....	75
4.5 The confiscation of lands .....	79
4.6 Chapter summary.....	85
<b>Chapter Five: Compensation for lands confiscated .....</b>	<b>88</b>
5.1 Chapter introduction .....	88
5.2 Legislative authority for compensation .....	89

5.3	Private compensation negotiations .....	91
5.4	Compensation Court .....	103
5.5	Chapter summary.....	129
<b>Chapter Six: Summary and Conclusion .....</b>		<b>133</b>
<b>Bibliography .....</b>		<b>143</b>
<b>Appendices.....</b>		<b>149</b>
8.1	Appendix 1: Native Reserves from Out-of-Court Negotiations .....	149
8.2	Appendix 2: Research Commission .....	151
8.3	Appendix 3: 1865 Proclamations of Peace & Martial Law.....	154
8.4	Appendix 4: Interpretation of Map Sent to Imperial Government c.1867 .....	156

## Table of Figures

Figure 1: North-Eastern Bay of Plenty Inquiry District and the 1866 Bay of Plenty land confiscation boundary.....	vi
Figure 2: Map of traditional areas occupied by Whakatōhea, Ūpokorehe and other hapū .....	8
Figure 3: General north-eastern Bay of Plenty iwi boundaries as interpreted by the Government in 1927 for the Māori Roll, includes confiscation boundary, and returned lands in yellow .....	12
Figure 4: Some of the key areas during the hostilities of 1865 to 1866 in the north-eastern Bay of Plenty .....	42
Figure 5: A map showing the overlap of the 1866 confiscation boundary and the North-Eastern Inquiry District.....	77
Figure 6: Table showing allocation of Confiscated Land by J A Wilson, 9 June 1868 .....	81
Figure 7: An excerpt from an c.1870 sketch map of the north-eastern Bay of Plenty confiscated lands and intended allocation .....	87
Figure 8: A map of entire confiscated area in north-eastern Bay of Plenty and the lands allocated for military and European settlements .....	94
Figure 9: Return of Whakatohea Tribe from Mr J A Wilson’s Census 1866 Showing Numbers of Surrendered & Unsurrendered Men, Women & Children.....	95
Figure 10: Map of area confiscated and lands returned as reserves through Wilson's arrangements in north-eastern Bay of Plenty.....	96
Figure 11: Hokianga Island and Hiwarau reserves for Ūpokorehe .....	99
Figure 12: Lands reserved for five rangatira in Tirohanga .....	102
Figure 13: Lands reserved for Rānapia Te Ūatahi in Ōpōtiki Valley.....	102
Figure 14: Return of Confiscated Lands in the Bay of Plenty, 1873.....	117
Figure 15: A map showing the north-eastern Bay of Plenty parish and general reference for the Table in Figure 16 .....	119
Figure 16: Selection of lands awarded within the North-Eastern Bay of Plenty Inquiry District & to groups/individuals associated with the Inquiry District .....	120
Figure 17: A map excerpt detailing some of the lands allocated (in yellow) to Whakatōhea and other iwi in the north-eastern Bay of Plenty .....	128

## Terms, Spellings, and Abbreviations

Macrons have been used for Māori words where known to be appropriate, but have not been added to quotations in archival sources or publications and their titles where they did not originally exist.

The spelling of Māori proper nouns, including individual names, tribal names, and place names vary considerably throughout the sources employed – wherever possible outside of quotes these have been checked and standardised.

### Terms

North-Eastern Bay of Plenty Inquiry District: the inquiry district as depicted in the Figure 1 map

north-eastern Bay of Plenty: the region generally

raupatu / land confiscation: have been used interchangeably

rood & perch: measurements of area 1/4 acre (0.1 hectares) & 1/160 acre (0.0025 hectares)

perch, rood: measurements of area (1/160 of an acre)

### Abbreviations

AJHR: Appendices, Journals of the House of Representatives

AJLC: Appendices, Journals of the Legislative Council

ANZ: Archives New Zealand

ATL: Alexander Turnbull Library

CMS: Church Mission Society

GIS: Quickmap (geographic information system)

na: not available

nd: no data

no: number

NZPD: New Zealand Parliamentary Debates

p and pp: page and pages

£, s, and d: currency of pounds, shillings, and pence

pt: part

vol: volume

# Inquiry District

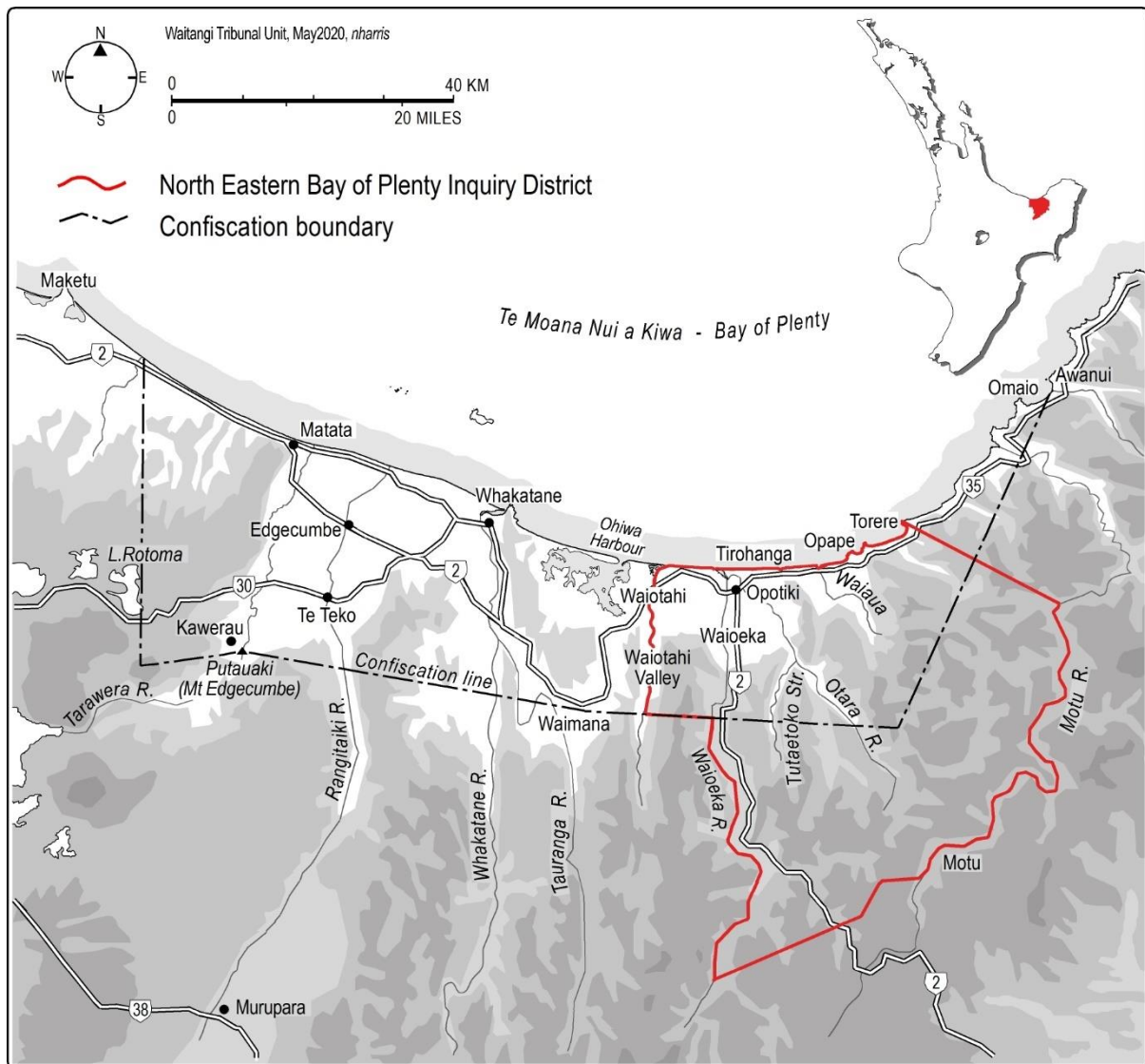


Figure 1: North-Eastern Bay of Plenty Inquiry District and the 1866 Bay of Plenty land confiscation boundary<sup>1</sup>

<sup>1</sup> Therese Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5, p 49; New Zealand Gazette, 27 September 1866, p 364

# Chapter One: Introduction

## 1.1 Project background and commission

At a judicial conference for the North-Eastern Bay of Plenty District Inquiry (Wai 1750) on 29 August 2019, the issue of raupatu and its impact was recognised as a principal grievance in the district. Parties attending the judicial conference expressed support for an early and raupatu focused project to be commissioned prior to the completion of a pre-casebook research discussion paper.<sup>2</sup>

On 1 October 2019, I was commissioned by Judge Doogan, presiding officer for the North-Eastern Bay of Plenty District Inquiry to complete a report on raupatu (land confiscation) in the Inquiry District with a focus on the period 1865 to 1871.<sup>3</sup> The Inquiry District as understood in May 2020 is shown in Figure 1. The memorandum-directions commissioning this report required that the following research issues be addressed:

- (a) The immediate context of the dispatch of a government military contingent to the Bay of Plenty district on 8 September 1865, including the authority relied on and reasons for the use of the military, the nature and impact of the military actions of 1865, and the responses of iwi and hapū.
- (b) The Crown treatment of those who surrendered to the military and those found guilty of the killing of Volkner; and impacts for iwi and hapū of this district, including on the local economy.
- (c) The authority relied on for implementing raupatu in the Opotiki district as proclaimed on 16 January 1866; the lands involved; and the government understandings of the iwi and hapū affected.
- (d) The way raupatu/confiscation was implemented on the ground in this district, including the extent to which communities and individuals were affected, as far as can be identified from official records.
- (e) The way compensation awards were expected to be implemented in this district, including any processes and protections, and rights to object to compensation arrangements provided for iwi and hapū subject to raupatu/confiscation.
- (f) The authority and process by which the Compensation Court awards were made in this district as part of the raupatu/confiscation process and any other negotiations or arrangements made by John Wilson, Special Commissioner, or other officials in the district.
- (g) The researcher will include brief background context, only insofar as it is relevant to raupatu/confiscation.<sup>4</sup>

The full commission is attached to this report as Appendix 2.

---

<sup>2</sup> The pre-casebook discussion paper has since been placed on the record; Therese Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5

<sup>3</sup> Wai 1750, 2.3.1, pp 2-3

<sup>4</sup> Wai 1750, 2.3.1, p 2



## 1.2 Claims

The exact number of claims in the North-Eastern Bay of Plenty Inquiry District was yet to be determined at the time of writing. However, the 'Pre-casebook Research Discussion Paper' has identified 97 claims which have already sought participation in the inquiry or have the potential to seek participation in the Inquiry.<sup>5</sup> Of these claimants, at least 21 have raised an issue of prejudice through the occupation of north-eastern Bay of Plenty by colonial forces from September 1865, or through the process of land confiscation and compensation under the New Zealand Settlements Acts 1863 and amendments.

Central to these claims is a challenge to the legitimacy of the invasion and occupation of the north-eastern Bay of Plenty by colonial forces in September 1865. Claimants submit that the invasion was unjustified, that occupying forces failed to make the terms of the Proclamation of Peace known, or differentiate 'rebels' from innocent parties, and carried out acts of atrocity against non-combatants, killed Māori, and looted and destroyed kāinga, material wealth, taonga and wāhi tapu.<sup>6</sup>

Further, claimants submit that following the occupation of the north-eastern Bay of Plenty their hapū and iwi were unjustly labelled 'rebels' by government authorities under the New Zealand Settlements Act 1863 and its amendments, and that the Crown subsequently confiscated their lands indiscriminately. Regarding the confiscation of lands in the Bay of Plenty claimants submit their lands were deliberately resettled by the Crown with military and other settlers and iwi. Subsequently, they claim they lost access to wāhi tapu as well as customary kainga, fishing grounds, arable lands and other traditional resources with many long-term negative socio-economic impacts on their whānau, hapū and iwi.<sup>7</sup>

The compensation process which followed is also subject to claims. Claimants state that compensation was inadequate, with insufficient lands reserved or otherwise provided for the subsistence of the number of Māori awarded. Additionally, claimants submit that the awarding of land as compensation

---

<sup>5</sup> Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper'

<sup>6</sup> Such claims include: Wai 87 1.1.1, p 2; Wai 87 1.1.1(c), pp 4-18; Wai 203 1.1.1, p 1; Wai 203 1.1.1(b), p 6; Wai 1092 1.1.1, p 11-13; Wai 1.1.1(a), pp 13-15; Wai 1511 1.1.1, pp 7-9; Wai 1758 1.1.1, p 7-8; Wai 1775 1.1.1, p 7-8; Wai 1781 1.1.1, pp 8-9; Wai 1787 1.1.1, pp 17-18; Wai 1794 1.1.1, p 12; Wai 1795 1.1.1, pp 7-8; Wai 1884 1.1.1, pp 7-8; Wai 2160 1.1.1, pp 5-6; Wai 2510 1.1.1, pp 1-2; Wai 2609 1.1.1, p 2

<sup>7</sup> Such claims include: Wai 87 1.1.1, p 2; Wai 87 1.1.1(c), pp 4-18; Wai 871.1.1(d), pp 2-4; Wai 1.1.1 (e-g), p 2; Wai 203 1.1.1(a), p 1; Wai 203 1.1.1(b), pp 7-14; Wai 558 1.1.1, p 2; Wai 558 1.1.1(d), p 22; Wai 1092 1.1.1, pp 14-16; Wai 1092 1.1.1(a), pp 16-18; Wai 1511 1.1.1, pp 7-9; Wai 1758 1.1.1, pp 8-9; Wai 1775 1.1.1, pp 8-9; Wai 1780 1.1.1, p 1; Wai 1781 1.1.1, pp 9-11; Wai 1782 1.1.1, p 1; Wai 1787 1.1.1, pp 17-19; Wai 1787 1.1.1(a), pp 11-15; Wai 1789 1.1.1(a), pp 4-5; Wai 1794 1.1.1, pp 12-18; Wai 1795 1.1.1, pp 8-9; Wai 1827 1.1.1, p 3; Wai 1884 1.1.1, pp 8-10; Wai 2006 1.1.1(a), p 5; Wai 2160 1.1.1, pp 3-7; Wai 22290 1.1.1, p 1; Wai 2290 1.1.1, p 4; Wai 2510 1.1.1, pp 1-2; Wai 2609 1.1.1, p 2

under Crown Grants of individualised title or inalienable reserves was unsuitable for the requirements of Māori.<sup>8</sup>

### 1.3 Methodology and sources

The memorandum-directions commissioning this research report raise several issues which require particular methodological approaches. Some of the issues are characteristic of previous Waitangi Tribunal district inquiries and have been well covered by Waitangi Tribunal reports, and commissioned research reports. The report draws frequently on previous Tribunal jurisprudence and research to identify relevant sources, build the necessary context, and help inform and shape the arguments and conclusions.

The first chapter in particular, brings together a range of secondary sources (published research of others) to build historical context. The chapter is largely a summary of relevant tribal histories from Ranginui Walker and A C Lyall, a number of Waitangi Tribunal reports from the surrounding inquiry districts, and commissioned research reports.<sup>9</sup>

Analysis of these sources provides a general understanding of Māori on the ground in the Inquiry District up to 1865, some of their intra-tribal dynamics, their relationships with colonial authorities and other iwi, their economy, and their spirituality. This context assists comprehension of the wider environment in which Reverend Völkner was killed and the colonial government opted to dispatch forces to the region, as well as an understanding of what was lost through the hostilities and land confiscation that ensued.

Subsequent parts of the report utilise a combination of secondary and primary sources (original published and unpublished documents created during the period of study). Primary sources consulted

---

<sup>8</sup> Such claims include: Wai 87 1.1.1, p 2; Wai 87 1.1.1(c), pp 4-18; Wai 87 1.1.1(d), pp 2-4; Wai 203 1.1.1(b), pp 7-14; Wai 558 1.1.1, p 2; Wai 1092 1.1.1, pp 16-20; Wai 1092 1.1.1(a), pp 16-22; Wai 1511 1.1.1, pp 8-12; Wai 1758 1.1.1, pp 8-12; Wai 1775 1.1.1, pp 8-12; Wai 1781 1.1.1, pp 10-12; Wai 1782 1.1.1, p 1; Wai 1787 1.1.1, pp 19-27; Wai 1787 1.1.1(a), pp 12-15; Wai 1789 1.1.1(a), pp 4-5; Wai 1794 1.1.1, pp 13-18; Wai 1795 1.1.1, pp 9-13; Wai 1827 1.1.1, p 3; Wai 1884 1.1.1, pp 8-13; Wai 2160 1.1.1, pp 3-7; Wai 2229 1.1.1, p 1

<sup>9</sup> Ranginui Walker, *Ōpōtiki-Mai-Tawhiti: Capital of Whakatōhea* (Auckland: Penguin, 2007); A C Lyall, *Whakatohea of Opotiki* (Wellington: Reed Books, 1979); Tom Bennion & Anita Miles, 'Research Report: Ngati Awa and Other Claims (Wai 46 & Others)' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, 1995); Bryan Gilling, 'Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994); Ewan Johnston, 'Wai 203 & 339 Scoping Report', (commissioned research report: Wellington, Waitangi Tribunal, 2001); Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999); Waitangi Tribunal, *Te Urewera*, vol 1 (Wellington: Legislation Direct, 2009)

include the *New Zealand Gazette*, an official government publication which printed proclamations and other commercial and government notifications required by legislation to be published.

The analysis contained in this report draws extensively from the Raupatu Document Bank (RDB). The 139-volume set includes copies of government records relevant to land confiscation and the enactment of the New Zealand Settlements Act and associated legislation. Documents utilised for the purposes of this report from the RDB included communications from Special Commissioner to the Bay of Plenty and Crown Agent J A Wilson and military officials regarding operations in Ōpōtiki, as well as records of Compensation Court proceedings, minutes, judges' notes, and awards from its four sittings. Further reports by Wilson to his superiors in Auckland and other communications regarding the progress of his work arranging the survey and allocation of lands in the north-eastern Bay of Plenty were accessed through Archives New Zealand. Contemporary maps were also sourced through Archives New Zealand and the National Library. These maps have helped shape those maps provided throughout this report by Noel Harris.

The *Appendices to the Journals of the House of Representatives* (AJHR), the official collection of government-related reports and papers presented to the House of Representatives by ministers and government departments, have been consulted throughout the report. Of particular importance are those reports of Wilson which detail the lands confiscated from Māori in 1866 and those subsequently returned via compensation from 1867 to 1874.

The memorandum-directions commissioning this research request a period of coverage from 1865 to 1871. This research report has extended that coverage to 1874 when the last compensation awards are published in the *New Zealand Gazette*.

The various lands returned via the compensation process were presented by Wilson in numbered schedules. All awards considered relevant to the North-Eastern Bay of Plenty Inquiry District have been separated out and collated in a table (Figure 16) presenting an approximation of the total lands awarded back to Māori as compensation within the Inquiry District by 1874. Awards were included where they identified an iwi, hapū or individual as recipient known to have claim within the Inquiry District. Or, by reference to a locality, parish, survey or lot considered or known to be within the Inquiry District.

## 1.4 Report structure

Chapter 2 provides a general overview of the historical context and tribal landscape in the Inquiry District up to the time of raupatu, or confiscation, of Māori land in the north-eastern Bay of Plenty in early 1866.

Chapter 3 then lays out the catalysts for raupatu in the Bay of Plenty. The first part of the chapter discusses the arrival of Pai Mārire adherents (Hauhau) in Ōpōtiki in 1865, as well as the killings of Reverend Völkner and James Fulloon and his crew. The second part of the chapter looks at the subsequent occupation of Ōpōtiki by colonial forces in late 1865 and the pursuit and conviction of Völkner and Fulloon's suspected killers.

Chapter 4 examines the authority under which raupatu was proclaimed and implemented by the colonial government in the North-Eastern Bay of Plenty Inquiry District from 17 January 1866. The chapter discusses the origins and development of the confiscation legislation and its amendments, and why it was introduced to the district in the wake of the events discussed in chapters 2 and 3. The confiscation boundary and the nature of the land confiscated from and set aside for Māori by the colonial government is also outlined.

Chapter 5 discusses the compensation process which followed confiscation of Māori land in the north-eastern Bay of Plenty. The chapter examines the authority under which confiscation was implemented. It then describes the compensation process occurring through privately negotiated out-of-court settlements from 1866, as well as through four sittings of the Compensation Court through 1867. The subsequent compensation awards of reserves and individualised land titles are also examined.

The report concludes with a summary shaped around the commission questions provided above.

## Chapter Two: Historical Context

### 2.1 Chapter introduction

The focus of this report is on the north-eastern Bay of Plenty region between 1865 and 1874 and the events which led to raupatu, or the confiscation of Māori lands and the implementation and awards of the compensation process that followed. The iwi of Whakatōhea traditionally occupied the lands within the North-Eastern Bay of Plenty Inquiry District confiscated in 1866 under the New Zealand Settlements Act 1863. It is for this reason that Whakatōhea are a focus of this chapter and research report. As Ūpokorehe were frequently included as a hapū of Whakatōhea by government sources of the time this report includes them as a hapū of Whakatōhea unless otherwise specified. Other iwi including Ngāitai, Ngāti Awa, Te Whānau-ā-Apanui, Te Arawa are also discussed where relevant.

This historical context chapter relies on secondary sources to provide a brief summary of the regional and tribal context as background to appropriately situate the discussions that follow. It demonstrates how Whakatōhea had utilised, lived off and prospered from these lands before they were confiscated. It begins with an overview of the iwi and hapū associated with the Inquiry District before considering some of the key contextual elements resulting from Pākehā contact and influence in the district including the settler economy, the New Zealand Wars, and Christianity.

### 2.2 Iwi and hapū overview

Whakatōhea histories written by Ranginui Walker and A C Lyall provide accounts of the pre-1865 developments of Whakatōhea hapū and their relations with the other iwi of the wider North-Eastern Bay of Plenty Inquiry District.<sup>10</sup> This section draws primarily on these sources. It comprises of a broad overview of the lands associated with Whakatōhea hapū and identifies some of the significant rangatira from about 1820 to 1865.<sup>11</sup>

Walker notes that in the early nineteenth century, Whakatōhea were a comparatively small iwi, whose territory stretched across approximately 35 kilometres of the north-eastern Bay of Plenty coastline and into the 'mountainous hinterland rising to the divide at Mōtū between Ōpōtiki and Tūranga'.<sup>12</sup> Claimants have provided a description of Whakatōhea's customary rohe as given by Te Hoeroa Horokai and Heremia Hoeroa on 14 July 1920:

---

<sup>10</sup> Ranginui Walker, *Ōpōtiki-Mai-Tawhiti: Capital of Whakatōhea* (Auckland: Penguin, 2007); A C Lyall, *Whakatohea of Opotiki* (Wellington: Reed Books, 1979)

<sup>11</sup> Walker, *Ōpōtiki-Mai-Tawhiti*; Lyall, *Whakatohea of Opotiki*

<sup>12</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 9

Commencing at Pakihi, at the mouth of the river along the sea coast to the coast to the mouth of the Waiotaha stream to the mouth of the Ohiwa stream to Te Haro (a hill) and then turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pā. Then descending to Waimana Stream, Mapouriki being on the bank; following the Waimana Stream towards its source at TAutautahi (a hill) along the banks to the mouth of the Parau stream on to Kaharoa (an old settlement); from Kaharoa to Ta Harakeke a ridge leading towards Maungapohatu to Maungatapere ( a hill) descending into Motu river to Kaitaurafalls to Peketutu (a rock in the river that was an old crossing); leaving the river and up a ridge to Whakarangona (a hill); following the hill tops till it reaches Tipi o Houmea (a peak) descending towards Makomako (another hill) till it crosses Takaputahi stream to Ngaupoko tangata (a mountain) following the ridge to Kamakama (a mound resting place); along the ridge to Oroi (a trig station) then turning seawards to Te Rangi on the sea coast, (It is a stone visible on the sea coast at low tide); then along the sea coast to the mouth of the Opape stream, to Awahou stream to Tirohanga and back to Pakihi. This then was the domain of Ngai Tamahaua Hapu and other FVhakatohea Hapu, an area of approximately 490,000 acres.<sup>13</sup>

By the mid-nineteenth century, Crown officials generally identified six hapū as being associated with Whakatōhea: Ngāi Tamahaua (Ngāi Tama), Ngāti Irapuia (Ngāti Ira), Ngāti Patumoana (Ngāti Patu), Ngāti Ruatākena (Ngāti Rua), Ngāti Ngahere and Ūpokorehe (Te Ūpokorehe).<sup>14</sup> Judith Binney indicates that Ūpokorehe sometimes identified with Tūhoe through the nineteenth century.<sup>15</sup> However, some claimants maintain that Ūpokorehe was an independent iwi throughout the nineteenth century and continues to be so.<sup>16</sup> It is also acknowledged here that a number of smaller hapū existed at the time, some of which continue to exist.

Tribal boundaries in the north-eastern Bay of Plenty have historically been contentious, and continue to be so. This report does not attempt to resolve such issues, but uses descriptions from Lyall and Walker to indicate general areas associated with each hapū. Other contextual information specific to each hapū is also included where available and relevant. A map from Lyall provided below as Figure 2 depicts the general rohe of Whakatōhea hapū and some of the ‘ancient tribes’ they descend from.

---

<sup>13</sup> Wai 1775, 1.1.1, p 4; Wai 1781, 1.1.1, p 5; Wai 1795, 1.1.1, p 4; Wai 1881, 1.1.1, p 4

<sup>14</sup> Historian, A C Lyall also identifies several other groups with varying association with Whakatohea from earlier periods in their book Lyall, *Whakatohea of Opotiki*, pp, 92-97

<sup>15</sup> Judith Binney, *Encircled Lands: Te Urewera, 1820-1921* (Wellington: BWB, 2009), p 18

<sup>16</sup> Submissions, Wai 1750, 3.1.8, p 3

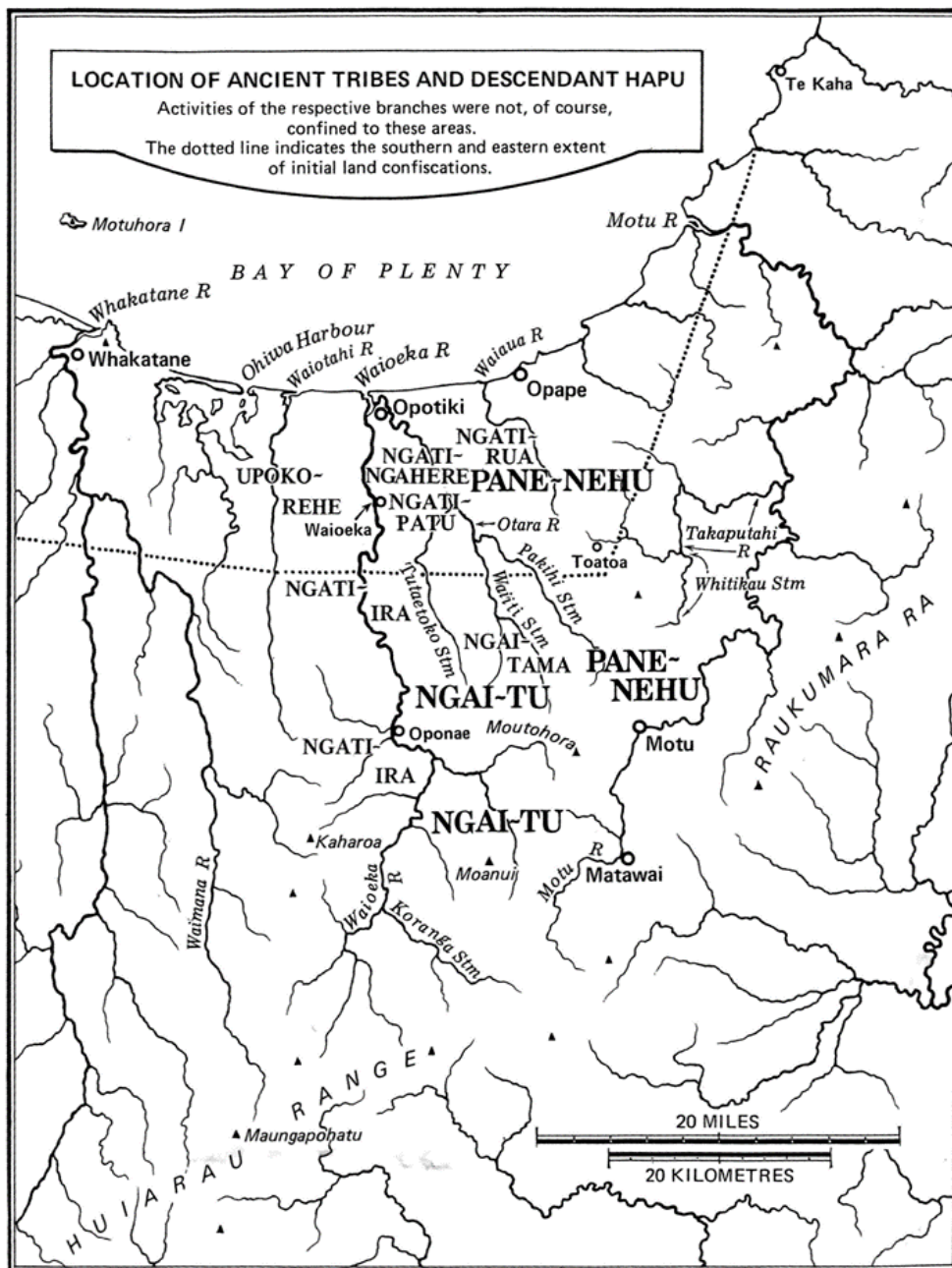


Figure 2: Map of traditional areas occupied by Whakatōhea, Ūpokorehe and other hapū<sup>17</sup>

According to Lyall, Ngāi Tama traditionally occupied the lands in the ‘basin of the Wai-iti Stream, its tributaries and its watershed’.<sup>18</sup> Titoko was a respected leader of Ngāi Tama during the 1820s and 1830s. He was also a leader of Whakatōhea more generally at a time when the tribe was still recovering from the wars of the 1820s and 1830s.<sup>19</sup> His role in leading Whakatōhea back to Ōpōtiki after these conflicts is explored in more detail below.

<sup>17</sup> Lyall, *Whakatohea of Opoiki*, nd  
<sup>18</sup> Lyall, *Whakatohea of Opoiki*, p 85  
<sup>19</sup> Lyall, *Whakatohea of Opoiki*, p 85

Lyall states that Ngāti Ira are closely associated with the Waioeka River and the land to the east and west of the river's banks.<sup>20</sup> Following what was, according to Lyall, a general trend amongst Whakatōhea hapū, they moved towards the coast in the first half of the nineteenth century to take advantage of opportunities to engage with European trade and missionaries.<sup>21</sup> Later, they returned to their ancestral lands near Waioeka to avoid conflicts in the Bay of Plenty involving the adherents of Pai Mārire.<sup>22</sup>

Ngāti Ngahere and Ngāti Patu are closely related hapū of Whakatōhea in terms of whakapapa and traditional lands.<sup>23</sup> According to Lyall, Ngāti Patu diverged from Ngāti Ngahere to establish itself as a hapū of its own. The full name of Ngāti Patumoana derives from the death of Hineiahua, a Ngāti Ngahere 'woman of rank' killed at sea by a Ngāpuhi war party around 1831.<sup>24</sup> Ruamoko was another important tīpuna for Ngāti Patu, according to Lyall. It is through tracing their whakapapa to him, rather than his half-brother Tahu, that Ngāti Patu differentiates itself from Ngāti Ngahere. Ruamoko's body was laid to rest in a cave along the Waioeka River, which Lyall explains likely indicates that the river is of particular spiritual significance for Ngāti Patu.<sup>25</sup>

Lyall details Ngāti Patu and Ngāti Ngahere's tribal boundaries as running from the Tutaetoko Stream and the Otara River to the east and the Waioeka River to the west.<sup>26</sup> With the arrival of Pākehā to the Ōpōtiki district, Ngāti Patu moved closer to the coast while continuing to use the area to the south as a food source.<sup>27</sup> By 1865, Lyall records Ngāti Patu as living primarily in Onehu.<sup>28</sup> Walker describes their land similarly, noting their occupation of the forested lands to the west of the Waioeka River to the rolling hill country of Paerātā.<sup>29</sup> Both hapū held 'original settlements' at Paerātā. Alongside the other hapū of Whakatōhea, however, they moved closer to Ōpōtiki in the mid-nineteenth century to take advantage of Pākehā trade.<sup>30</sup> Walker also mentions that Ngāti Ngahere and Ngāti Patu held settlements at Ahirau and Onekawa.<sup>31</sup>

---

<sup>20</sup> Lyall, *Whakatohea of Opotiki*, pp 50-55

<sup>21</sup> Lyall, *Whakatohea of Opotiki*, p 56

<sup>22</sup> Lyall, *Whakatohea of Opotiki*, p 56-57

<sup>23</sup> Lyall, *Whakatohea of Opotiki*, p 87

<sup>24</sup> Lyall, *Whakatohea of Opotiki*, p 87

<sup>25</sup> Lyall, *Whakatohea of Opotiki*, pp 88-90

<sup>26</sup> Lyall, *Whakatohea of Opotiki*, pp 90-91; Walker, *Ōpōtiki-Mai-Tawhiti*, p 61

<sup>27</sup> Lyall, *Whakatohea of Opotiki*, pp 90-91; Walker, *Ōpōtiki-Mai-Tawhiti*, p 61

<sup>28</sup> Lyall, *Whakatohea of Opotiki*, pp 90-91

<sup>29</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 35; Walker uses 'Waiōweka' as an alternative spelling of 'Waioeka'. They are presumed here to refer to the same river and area.

<sup>30</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 60

<sup>31</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 38



Walker and Lyall explain that Ngāti Rua have close ties to the Waiaua River, an important eastern boundary of the Whakatōhea rohe.<sup>32</sup> The other hapū of Whakatōhea 'recognised Ngāti Rua as holding the mana whenua of Waiaua from their ancestor Tāpuikākaha on behalf of all of Whakatōhea'.<sup>33</sup> As Pākehā settlement grew the economy in and around Ōpōtiki during the early to mid-nineteenth century, Ngāti Rua increased their presence around Ōpōtiki. They did so while maintaining a permanent occupation at Waiaua, defending it from Ngāitai to the east, and keeping it in Whakatōhea hands.<sup>34</sup>

Both Walker and Lyall emphasise the significance of Te Āporotanga, a Ngāti Rua rangatira, as an ariki (paramount chief) of Whakatōhea.<sup>35</sup> These historians respectively describe Te Āporotanga's death at Matatā in April 1864, following the Battle of Kaokaoroa, as a 'serious setback for the iwi and as leaving Whakatōhea with 'no man in the tribe of real influence to guide their thinking'.<sup>36</sup> In the uncertain, tumultuous, and violent environment of the North Island in the 1860s, the loss of his leadership was to the detriment of Ngāti Rua and all of Whakatōhea.<sup>37</sup>

The precise nature of Ūpokorehe's relationship to Whakatōhea is a matter of some discussion. Ūpokorehe has been variously identified as both a hapū of Whakatōhea and Tūhoe, but today often perceives of itself as an iwi in its own right.<sup>38</sup> It is important to note that Ūpokorehe was frequently considered as part of Whakatōhea by colonial authorities in the mid-nineteenth century and were largely treated as such for the purposes of land confiscation and compensations. This is discussed further in later chapters.

Ūpokorehe has, according to Lyall, historically occupied a large area of land at varying times from 'western Ohiwa to the Waioeka River; from Ohiwa and Waiotahi headlands, up the Waiotahi Valley to the interior of Kaharoa'.<sup>39</sup> They also occupied Te Waimana up until the 1820s when Ngāpuhi and Ngāti Maru invasions forced them to 'flee inland'.<sup>40</sup> In the 1830s, these same invasions temporarily displaced Ūpokorehe from the Ōhiwa Harbour, an especially significant and contested area of ancestral land for Ūpokorehe. They re-established their presence there under the leadership of Mokomoko.<sup>41</sup> A large

---

<sup>32</sup> Lyall, *Whakatohea of Opotiki*, p 60

<sup>33</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 61-62

<sup>34</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 61-62

<sup>35</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 77; Lyall, *Whakatohea of Opotiki*, p 157

<sup>36</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 77; Lyall, *Whakatohea of Opotiki*, p 157

<sup>37</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 77

<sup>38</sup> Submissions, Wai 1750, 3.1.8, p 3; Ewan Johnston, 'Wai 203 & 339 Scoping Report', (commissioned research report: Wellington, Waitangi Tribunal, 2001)

<sup>39</sup> Lyall, *Whakatohea of Opotiki*, pp 74-75

<sup>40</sup> Ewan Johnston, 'Wai 203 & 339 Scoping Report', p 9

<sup>41</sup> Ewan Johnston, 'Wai 203 & 339 Scoping Report', p 13

and ancient puriri tree named Taketakerau was an important burial site for the hapū. It is located in what is now the Hikutaia Domain.<sup>42</sup>

According to Lyall, the early to mid-nineteenth century saw ties between the hapū of Whakatōhea tighten. Lyall describes this period as one of cohesion and cooperation ‘not known either before or since’ amongst the hapū of Whakatōhea.<sup>43</sup> The conflict of the 1820s with northern iwi resulted in Whakatōhea hapū shifting away from the coastline they had traditionally inhabited. Historians such as Ranginui Walker and Bryan Gilling have described these conflicts as ‘devastating’ for the economy and fighting strength of Whakatōhea.<sup>44</sup> Following a severe defeat at the hands of Ngāti Marū around 1830, Whakatōhea fled to various safe refuges in the surrounding region.<sup>45</sup> Walker suggests that Ōpōtiki, ‘the capital of Whakatōhea, was all but abandoned’ by the time hostilities eased in the 1830s.<sup>46</sup> However, under the leadership of Titoko (Ngāi Tama) and other rangatira the Whakatōhea hapū re-established their presence around Pākōwhai and the wider Ōpōtiki area.<sup>47</sup> Titoko also led the build of Te Papa pā, west of the Waioeka, encouraging the hapū of Whakatōhea to ‘live together for greater security’ following the conflicts with northern tribes.<sup>48</sup> Walker states that Whakatōhea slowly returned to Ōpōtiki, weakened from the fighting, with individual hapū rebuilding their kainga throughout the 1830s.<sup>49</sup>

By the early 1860s, government officials described Whakatōhea as occupying the ‘coast from Ohiwa to a point called Tirohanga, about half way between Opotiki Heads and Opape – that is, to a hill with some Rata trees on it, about half way along the sand beach South-East of Opotiki’.<sup>50</sup> However, this is likely to have been an underestimate of the iwi’s eastern boundaries, as Walker claims the hapū of Ngāti Rua were known to have occupied lands as far as Waiaua in the east, and Ōpape in the north-east.<sup>51</sup>

### 2.2.1 Bordering iwi and their relationship with Whakatōhea

The north-eastern Bay of Plenty was home to numerous iwi in the nineteenth century. Lyall describes the general boundaries of the iwi and hapū surrounding Whakatōhea as follows: ‘on their western

---

<sup>42</sup> Lyall, *Whakatohea of Opotiki*, pp 74-75

<sup>43</sup> Lyall, *Whakatohea of Opotiki*, p 85

<sup>44</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 9; Bryan Gilling, ‘Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866’ (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994), p 5

<sup>45</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 47-48

<sup>46</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 9

<sup>47</sup> Bryan Gilling, ‘Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866’ (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994), p 5

<sup>48</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 47

<sup>49</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 48

<sup>50</sup> C Hunter Brown, ‘Report from C Hunter Brown, Esq., of an Official Visit to the Urewera Tribes’, June 1862, AJHR, 1862, E-9, Sec IV, p 31

<sup>51</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 61

flank Tuhoē and Ngāti-Awa; to the east Ngāi-Tai and Whanau-a-Apanui ... and to the south, Ngāti-Kahungunu, Aitanga-a-Mahaki and Whanau-a-Kai'.<sup>52</sup> Te Arawa in the Bay of Plenty and Rotorua area and Ngāti Porou further to the east were also relatively close neighbours of Whakatōhea. An excerpt from a map (Figure 3 below) provides a very general idea of how the government interpreted north-eastern Bay of Plenty iwi boundaries in the late 1860s. This map overlooks Ngāitai among others.

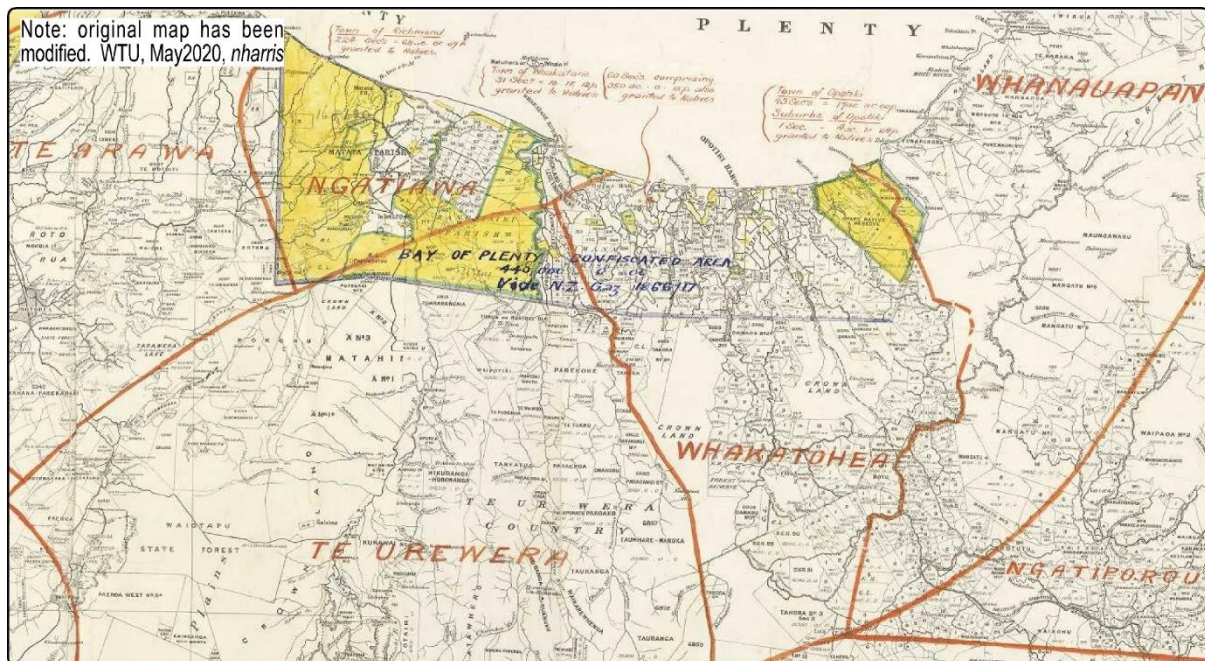


Figure 3: General north-eastern Bay of Plenty iwi boundaries as interpreted by the Government in 1927 for the Māori Roll, includes confiscation boundary, and returned lands in yellow<sup>53</sup>

According to Lyall, alliances between iwi and hapū could change quickly for a variety of reasons. In the densely populated area of the Bay of Plenty, the 'friends of today turned suddenly into the furious enemies of tomorrow on pretext large or small, real or imagined'.<sup>54</sup> There is a long and eventful history of conflict in the Bay of Plenty prior to the arrival of Pākehā. For the purposes of this report, this section focuses primarily on the nature of Whakatōhea's pre-1865 relationship with those bordering iwi who reappear throughout the history of raupatu the North-Eastern Bay of Plenty Inquiry District.

Historian Ewan Johnston states Whakatōhea's western boundary was a highly contested area in the north-eastern Bay of Plenty. From the 1820s, Ūpokorehe, Ngāti Awa, and Tūhoē all had some claim to the Ōhiwa Harbour, the right to harvest kaimoana from it, and the land and resources surrounding it. Johnston suggests that the area around the Ōhiwa Harbour may have been 'one of the most densely

<sup>52</sup> Lyall, *Whakatohea of Opotiki*, p 113

<sup>53</sup> BAPP 24788 A1721 213/a B43 1927, ANZ, Wellington, edited by Noel Harris May 2020

<sup>54</sup> Lyall, *Whakatohea of Opotiki*, p 113

settled areas in pre-European Aotearoa'.<sup>55</sup> Subsequently, control over the harbour was heavily contested and tribal boundaries dynamic and this has been discussed in previous Waitangi Tribunal reports.<sup>56</sup> However, this issue is relevant insofar as it serves to demonstrate the relationship between Ngāti Awa, Tūhoe, and Whakatōhea at that time.

Johnston and fellow historian Judith Binney note that before the nineteenth century Tūhoe had access rights to the Ōhiwa Harbour, a relationship which was 'mediated' by the blessing of Whakatōhea and Ūpokorehe.<sup>57</sup> The Waitangi Tribunal's Te Urewera district inquiry report also states, however, that Tūhoe's right to access Ōhiwa was 'not merely negotiated through Te Upokorehe' but was also ancestral through their tīpuna Tairongo and through a permanent settlement near the harbour's shores.<sup>58</sup> Walker and Lyall nonetheless suggest Whakatōhea perceived Tūhoe to be encroaching upon parts of the Ōhiwa Harbour in the early nineteenth century. This led to conflict at Maraetotara River in around 1823, ending in victory for Whakatōhea.<sup>59</sup> Ūpokorehe claim that from then onwards, they continued to allow Tūhoe access to Ōhiwa, but had firmly entrenched their control over the harbour and the lands surrounding it.<sup>60</sup> In Lyall's assessment, this was the last time Tūhoe and Whakatōhea would engage in open conflict.<sup>61</sup>

Ngāti Awa also claimed to exert exclusive control over the Ōhiwa Harbour around this time. In their telling, they solidified control over the harbour after fighting alongside Ngāti Marū during an assault on Whakatōhea's Te Papa pā in 1830. Whakatōhea were routed, and Ngāti Awa claimed that control over Ōhiwa 'in its entirety' passed to and remained with them following this victory.<sup>62</sup>

Ūpokorehe vehemently dispute this interpretation. They argue that insofar as control of Ōhiwa passed to Ngāti Awa, it did so only temporarily. Johnston suggests that once Whakatōhea returned to the coast following the northern raids which had so weakened the iwi, Ūpokorehe re-established their own control over Ōhiwa.<sup>63</sup>

To the north-east of Whakatōhea were Ngāitai. Lyall describes the 'generations of intermittent but unceasing strife' between the two iwi in some detail.<sup>64</sup> This included conflict throughout the

---

<sup>55</sup> Johnston, 'Wai 203 & 339 Scoping Report', p 6

<sup>56</sup> Johnston, 'Wai 203 & 339 Scoping Report', p 11; Waitangi Tribunal, *Te Urewera*, vol 1 (Wellington: Legislation Direct, 2009), pp 255-259; Bennion & Miles, 'Ngati Awa and Other Claims', pp 87-93

<sup>57</sup> Johnston, 'Wai 203 & 339 Scoping Report', p 9; Binney, *Encircled Lands*, p 55

<sup>58</sup> Waitangi Tribunal, *Te Urewera*, vol 1, p 256

<sup>59</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 63; Lyall, *Whakatohea of Opotiki*, pp 39-40

<sup>60</sup> Johnston, 'Wai 203 & 339 Scoping Report', p 10; Walker, *Ōpōtiki-Mai-Tawhiti*, p 63; Lyall, *Whakatohea of Opotiki*, p 40

<sup>61</sup> Lyall, *Whakatohea of Opotiki*, p 138

<sup>62</sup> Johnston, 'Wai 203 & 339 Scoping Report', p 12

<sup>63</sup> Johnston, 'Wai 203 & 339 Scoping Report', pp 11-13

<sup>64</sup> Lyall, *Whakatohea of Opotiki*, pp 122-128

nineteenth century, such as when an alliance of Ngāitai and Ngāti Marū assaulted Te Papa pā in 1830, as well as the regular struggle for control over the eastern Whakatōhea boundary at Waiaua.<sup>65</sup>

Some peace was made between these iwi around the 1840s however. By the 1830s, Walker claims Ngāitai were 'in disarray', describing them as 'refugees' resulting from conflict with Whakatōhea and others.<sup>66</sup> According to Walker, Ngāti Rua asserted their control over Waiaua with the construction of the palisaded Te Rangiariki pā there in 1844. Securing this eastern boundary brought peace between Whakatōhea and Ngāitai. This peace was cemented by the exchange of the preserved head of Ngāitai chief Tūterangikūrei, which had been in Whakatōhea's possession, for Waiwharangi, a 'prized greenstone toki pouwhenua'. This exchange forged a new relationship, ending what Walker describes as generations of 'blood feud' between Whakatōhea and Ngāitai.<sup>67</sup>

### 2.2.2 Pākehā contact and influence

For the first few decades of European occupation of Aotearoa New Zealand, few Pākehā ventured into the north-eastern Bay of Plenty. The area remained a largely Māori sphere until the invasion of colonial forces in 1865, which is discussed in chapter 3. However, as detailed below, copies of the Treaty of Waitangi did pass through the region in 1840, and as the Pākehā population began to grow elsewhere, Māori of the region began engaging in the Pākehā economy, religion and wars.

James Fedarb brought a copy of Te Tiriti o Waitangi to the Bay of Plenty in May 1840. Seven rangatira of Whakatōhea signed this sheet on 27 and 28 May at Ōpōtiki.<sup>68</sup> They were Tautoru (Tauatoro) of Ngāi Tamahaua and Ngāti Ngahere, Takahi of Te Ūpokorehe, Āporotanga of Ngāti Rua, Rangimatanuku of Ngāti Rua, Rangihaerepō of Ngāti Patu and Ngāi Tamahaua, Ake of Te Ūpokorehe, and Wakiia (Te Whakia) whose hapū Claudia Orange does not list, but who Lyall records as Ngāti Ira.<sup>69</sup> During the signing in Ōpōtiki, Fedarb gifted signatories a total of 8 pounds of tobacco and 12 smoking pipes.<sup>70</sup>

## 2.3 The Whakatōhea economy

The story of Whakatōhea's economy in the mid-nineteenth century is one of substantial devastation, followed by a period of re-growth, culminating in prosperity and material wealth for the iwi by the 1860s. As described above, the conflicts with northern tribes left Whakatōhea on shaky ground. Their

---

<sup>65</sup> Lyall, *Whakatohea of Opotiki*, p 125; Walker, *Ōpōtiki-Mai-Tawhiti*, pp 41-43

<sup>66</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 43

<sup>67</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 61-62

<sup>68</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 8

<sup>69</sup> Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Wellington: BWB, 2004) p 304; Lyall, *Whakatohea of Opotiki*, p 151; Personal Communications with Solicitor, Jordan Chaney of Annette Sykes & Co, 22 June 2020

<sup>70</sup> Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Wellington: BWB Books, 2004), p 41

numbers were diminished and they were dislocated from their traditional areas of settlement by the early 1830s. Consequently, the Whakatōhea economy was greatly inhibited.

From around 1840, as Whakatōhea returned to their traditional lands, the iwi entered a period of regrowth.<sup>71</sup> Walker describes how a small number of Europeans began to establish ‘trading stores among the tribes in the Bay of Plenty’ in the 1830s. European shipbuilders also set up shop in the region to meet demand for vessels to ship goods in and out of the region. Whakatōhea welcomed these Pākehā as they created opportunities for trade. Growing Pākehā settlement elsewhere in the colony stimulated a new economy for Whakatōhea, and Ōpōtiki became an especially important settlement for trade. A number of Whakatōhea hapū cultivated crops and established a greater presence around Ōpōtiki to better grasp these new economic opportunities.<sup>72</sup>

This period of economic regrowth was accompanied by an increase in the population of Ōpōtiki. The first Anglican missionary in Ōpōtiki, John Alexander Wilson, estimated the population in the Ōpōtiki district to be about 1200 in 1841.<sup>73</sup> By 1850, this had increased to an estimated 2,550.<sup>74</sup>

Walker describes how by the 1860s, the north-eastern Bay of Plenty was home to a thriving economy. This was based on trade with Pākehā, extensive cropping of ‘maize, potatoes, wheat, kūmara and taro’, and grazing of livestock on the land around Ōpōtiki.<sup>75</sup> The area was well-suited to this purpose, possessing ‘rich alluvial soil’ and a flood plain which produced ‘luxuriant grass for grazing cattle and horses’.<sup>76</sup> Whakatōhea acquired a fleet of thirteen ships which they used to transport goods to Auckland markets, and tools and equipment to improve their farming practices. Hira Te Popo of Ngāti Ira built a flour mill in 1858 to grind his hapū’s wheat until the mill was destroyed during the invasion of colonial forces in 1865.<sup>77</sup> Whakatōhea built infrastructure such as roads and bridges to facilitate easier transportation of goods.<sup>78</sup> Gilling provides examples of a number of Pākehā who visited the area in the years preceding and up to 1865 who commented on the economic prosperity of Whakatōhea.<sup>79</sup>

During his visit in 1862, Government official C Hunter Brown did note some concerns regarding the future of the Whakatōhea economy. Particularly, he felt that over-cropping ran the risk of depleting

---

<sup>71</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 63-65

<sup>72</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 60

<sup>73</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 50

<sup>74</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 65

<sup>75</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 67

<sup>76</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 59

<sup>77</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 67; The events Walker refers to here are discussed in more detail in later chapters.

<sup>78</sup> H H Turton, ‘Report by Mr Hanson Turton respecting the Runanga Maori’, 20 November 1861, AJHR, 1862, E-5A, p 8; Gilling, ‘Te Raupatu O Te Whakatohea’, pp 13-14

<sup>79</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, pp 14-16

the topsoil in the area and that some of the iwi's assets were falling into disrepair due to lack of proper maintenance.<sup>80</sup> Indeed, Gilling notes that there was some suggestion that Whakatōhea might gift land allowing 'European tradespeople to settle' in the region so they could help assist in the maintenance of new equipment. Government official Hanson Turton 'exhorted the Government' to encourage as much, a scheme which had the support of the local rūnanga.<sup>81</sup> Nevertheless, the picture Walker depicts is one of an iwi who were willing and capable participants in trade with Pākehā, prospering from the use of their lands and resources.

Furthermore, Gilling makes the important point that to the 'extent that Whakatohea engaged in trade and commerce with Europeans, they did so on their own terms'. They had contact with Pākehā, particularly missionaries and traders, and embraced the opportunities that European trade and technology presented. But the influence of the colonial Government in 1865 was minimal. In Gilling's assessment, they were 'still effectively unshackled at a day-to-day practical level in their tribal area by the rules and regulations of Pākehā officialdom and thus retained their tino rangatiratanga in most tangible ways'.<sup>82</sup> Walker makes the same point, writing that 'they continued to exercise tino rangatiratanga in their own territory' well after the signing of the Treaty of Waitangi.<sup>83</sup>

---

<sup>80</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 68; C Hunter Brown, 'Report from C Hunter Brown, Esq., of an Official Visit to the Urewera Tribes', June 1862, AJHR, 1862, E-9, Sec IV, pp 23-34

<sup>81</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 14

<sup>82</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 16-17

<sup>83</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 62

## 2.4 New Zealand Wars

In a direct sense, Whakatōhea's involvement in the New Zealand Wars pre-1865 was relatively limited. However, it is suggested here that the actions of some individuals and hapū during this time helped shape the colonial authorities' perception of Whakatōhea as 'rebels'.

Whakatōhea were not involved in either of the wars in Taranaki in the 1860s. According to Walker, they did, however, send an 'observer' to Taranaki to gather first-hand information about the conflict.<sup>84</sup> Whakatōhea were clearly aware of and interested in the conflict in Taranaki.

Furthermore, Whakatōhea became more guarded and suspicious towards the Government. Walker suggests the stockpiling of gunpowder and ammunition suggested the iwi were expecting and preparing to be attacked.<sup>85</sup> Government official C Hunter Brown received a hostile welcome at Ōpōtiki in 1862, reporting anti-Government sentiment amongst Whakatōhea.<sup>86</sup> They likewise became distrustful of Reverend Carl Sylvius Völkner around 1864, suspecting correctly that he was relaying information about the movements of Māori in the Bay of Plenty to the Government. Recognising the potential danger this brought upon him, in early 1865 Völkner took his wife to Auckland for her safety. He was warned not to return to Ōpōtiki; ignoring this warning would ultimately lead to Völkner's death.<sup>87</sup> This is discussed in more detail in subsequent chapters of this report.

The most direct involvement of Whakatōhea in the pre-1865 New Zealand Wars was in 1864. Members of Whakatōhea joined the large Tai Rāwhiti taua comprised of East Coast iwi which moved west in February 1864 to provide support to Waikato in the fight against Crown forces.<sup>88</sup> The Tai Rāwhiti taua did not make it to Waikato. They were prevented by Te Arawa, who objected to the taua taking a route through their lands. According to historian Vincent O'Malley, Te Arawa feared that allowing the taua passage would implicate Te Arawa in 'rebellion' and make them 'a target for future Crown retribution'.<sup>89</sup> Most of the Tai Rāwhiti taua retreated to Matatā following conflict at Lake Rotoiti between 7 to 9 March 1864.

After re-consolidating forces, the Tai Rāwhiti taua again sought a path through Te Arawa coastal lands, this time to support hapū in Tauranga. The taua clashed with Te Arawa between 26 and 29 April,

---

<sup>84</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 73

<sup>85</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 73

<sup>86</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 73

<sup>87</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 81

<sup>88</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 37. The Ngāti Awa Raupatu report estimates that this war party was 400-600 strong. Both A C Lyall and Vincent O'Malley put the size of this party at closer to 800. See Lyall, *Whakatohea of Opotiki*, p 154 and O'Malley, *The New Zealand Wars*, p 134

<sup>89</sup> O'Malley, *The New Zealand Wars*, pp 134-135



culminating in the Battle of Kaokaoroa (near Matatā). This time, Te Arawa were supported by British troops, two naval vessels, and Tūwharetoa of Taupō. The Tai Rāwhiti taua suffered heavy losses during this fighting and their resulting retreat.<sup>90</sup> Among those killed were members of Whakatōhea, such as rangatira Te Ringa Mataru and Te Āporotanga, as well as ‘others of the tribe’.<sup>91</sup> Buddy Mikaere also notes that two Whakatōhea men were present at Gate Pā on 29 April, Tamaki and Poihipi. Poihipi was later killed in action at Te Ranga on 21 June 1864.<sup>92</sup>

Whakatōhea appear to have been preparing for further potential conflict. Gilling describes a new fortified pā near Ōpōtiki built in 1865. He guesses that this pā may have been Te Tarata, which colonial troops attacked in early October 1865. He concludes that its construction was an ‘indication of Whakatohea’s preparations for war’, presumably with the Crown.<sup>93</sup>

Whakatōhea’s participation in the Tai Rāwhiti taua indicates a fairly substantial level of support for the Kīngitanga at a broad level. In February 1864, Whakatōhea pledged allegiance to the Kīngitanga in a letter to Wiremū Tāmihana.<sup>94</sup> The involvement of Te Āporotanga suggests support from Ngāti Rua. Ranginui Walker and A C Lyall both note that he was a rangatira possessing mana across the hapū of Whakatōhea.<sup>95</sup> His apparent support for the Kīngitanga likely carried weight amongst Whakatōhea as a result. Gilling also notes that Hira Te Popo and others of Ngāti Ira, Kakarua of Ngāi Tama, Mokomoko of Ngāti Patu, and Te Iki of Ngāti Rua were important Whakatōhea rangatira who marched with the Tai Rāwhiti taua.<sup>96</sup>

Overall, the direct involvement of Whakatōhea in the New Zealand Wars before 1865 was limited to their involvement in a series of conflicts within the Bay of Plenty early in 1864. The iwi was nevertheless interested in developments in Taranaki in the years preceding, and grew distrustful of the Government and suspected Government agents such as Völkner.<sup>97</sup> The iwi’s attempts to assist Kīngitanga in the defence of the Waikato and to establish their own defensive fortifications helped frame perceptions held by colonial officials that Whakatōhea were ‘rebellious’ against Crown authority.

---

<sup>90</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 37-38

<sup>91</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, pp 23-24; Lyall, *Whakatohea of Opotiki*, p 156

<sup>92</sup> Buddy Mikaere, ‘Exploratory Report to the Waitangi Tribunal an Historical Account of the Confiscation of land in the Opotiki District’, (commissioned research report, Wellington: Waitangi Tribunal, 1991), p 10

<sup>93</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 24

<sup>94</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 77; Lyall, *Whakatohea of Opotiki*, p 75

<sup>95</sup> Ranginui Walker, *Ōpōtiki-Mai-Tawhiti: Capital of Whakatōhea* (Penguin, Auckland: 2007), p 77; Lyall, *Whakatohea of Opotiki*, p 157

<sup>96</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, pp 22-23

<sup>97</sup> The reasoning for Whakatōhea’s distrust of the government and Völkner is developed in the next chapter.

## 2.5 Influence of Christianity

The uptake of Christianity by Whakatōhea through the nineteenth century, alongside the retention of many of their traditional spiritual beliefs and practices, created fertile ground among adherents for Pai Mārire when it arrived in 1865.

Prisoners of war from the Musket Wars of the 1820s and 1830s were some of the first to introduce Whakatōhea to Christianity.<sup>98</sup> During their campaigns in the Bay of Plenty, Ngāpuhi and Ngāti Marū took prisoners north with them, where some of these prisoners were converted to Anglicanism. Upon their release in 1834, they brought this new religion back to the Bay of Plenty.<sup>99</sup> Piripi Taumatakura was a key figure among those who brought this message to Whakatōhea, laying the path for both Catholic and Anglican missionaries.<sup>100</sup>

By the 1840s, Ōpōtiki was home to a small number of both Anglican and Catholic missionaries. Both found adherents amongst the population of Whakatōhea. While they by no means displaced traditional religious practices, Christianity influenced Whakatōhea society in a variety of ways. According to Walker, as well as offering 'divine salvation', the presence of missionaries created opportunities for schools, new knowledge and trade, missionaries themselves even dispensed advice on developing the economy, cropping and farming in the region.<sup>101</sup> Some of the first sales and gifting of land around Ōpōtiki was also for the establishment of missions.<sup>102</sup>

A lay catechist of the Church Missionary Society (CMS), John Alexander Wilson, visited Ōpōtiki in December 1839.<sup>103</sup> He was formally appointed by the CMS to establish a parish in Ōpōtiki the following month in January 1840, but was not resident until March 1841.<sup>104</sup> He was 'pleasantly surprised' to happen upon a 'religious service conducted by Māori teachers' when he first arrived in December 1839. He was encouraged by this established interest in Christianity and that some of those in attendance were already literate.<sup>105</sup>

According to Walker, following Wilson's establishment of his mission, Ngāi Tama, Ngāti Ngahere, and Ngāti Ira all 'embraced' the Anglican Church and helped build the first church in Ōpōtiki, which became

---

<sup>98</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 49

<sup>99</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 49

<sup>100</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 49

<sup>101</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 53

<sup>102</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 50 & 51-52; Gilling, 'Te Raupatu O Te Whakatohea', pp 7-8; Lyall, *Whakatohea of Opotiki*, p 85

<sup>103</sup> The missionary, John Alexander Wilson, was father to Special Commissioner and Crown Agent J A Wilson who is discussed more thoroughly in later chapters.

<sup>104</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 6

<sup>105</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 50

known as 'Hīona' (Zion).<sup>106</sup> Wilson remained in Ōpōtiki for a little over a decade. According to Wilson, there were 163 'converts' when he left in 1851.<sup>107</sup> He was replaced by Reverend Christopher Pearson Davies, who arrived in April 1852. Davies was forced to leave the mission in 1856 due to poor health. He was not replaced until Reverend Carl Sylvius Völkner arrived in August 1861.<sup>108</sup> Völkner's influence in Ōpōtiki and his death at the hands of some of his followers is discussed further in chapter 3.

Bishop Pompallier held the first Catholic mass in Ōpōtiki on 22 March 1840. He was received by Moka, a 'northern chief, who had married a [Ngāti Rua] woman he had captured from Ōpōtiki during the Ngāpuhi raids'.<sup>109</sup> Ngāti Rua embraced Catholicism at Moka's suggestion, again illustrating the role prisoners of war played in bringing Christianity to Whakatōhea. Ngāti Patu also adopted Catholicism, and according to Walker, Ngāti Ira later converted from Anglicanism to Catholicism.<sup>110</sup> Between 1840 and 1862, a series of Catholic missionaries maintained a presence in Whakatāne and Ōpōtiki.<sup>111</sup> In 1862, Father Joseph Garavel assumed authority over the Ōpōtiki mission.<sup>112</sup>

Significant numbers of Whakatōhea converted to Christianity, but as was common elsewhere in Aotearoa they did not abandon all their traditional religious practices and beliefs.<sup>113</sup> Ranginui Walker explains how in the early 1840s, Father Chouvet encountered several occasions in which he had to defer to the mana of Whakatōhea tohunga, for example.<sup>114</sup> The influence and authority of missionaries and their Christian faith was by no means absolute.

Reverend Wilson estimated there were 1,000 'professed Christians' in the Ōpōtiki District in October 1848.<sup>115</sup> Among these, the differences between Anglicanism and Catholicism probably mattered more to the missionaries than to their converts.<sup>116</sup> Both found adherents, and the demarcation between some of those adherents defined their responses to the killing of Reverend Völkner in 1865.

---

<sup>106</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 51

<sup>107</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 51

<sup>108</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 9

<sup>109</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 56

<sup>110</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 56

<sup>111</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 52 & 66

<sup>112</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 66

<sup>113</sup> Paul Clark, 'Hauhau': *The Pai Marire Search for Maori Identity* (Auckland: AUP, 1975), pp 1-2

<sup>114</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 53-54

<sup>115</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 11

<sup>116</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 53

## 2.6 Chapter summary

As discussed above, this historical context chapter has drawn on the work of a number of established histories on the north-eastern Bay of Plenty and Whakatōhea. The chapter's synthesis of these accounts is summarised below.

Whakatōhea occupied most of the land within the North-Eastern Bay of Plenty Inquiry District confiscated under the New Zealand Settlements Acts 1863 and amendments, in early 1866. At this time the Whakatōhea iwi, through six hapū, including Ngāi Tama, Ngāti Ira, Ngāti Patu, Ngāti Rua, Ngāti Ngahere and Ūpokorehe maintained a coastal boundary from Ōhiwa in the west to Ōpape in the north-east.<sup>117</sup>

The hapū of Whakatōhea had held close connections to the Ōpōtiki Harbour and this part of the coast for generations, and despite withdrawing inland in the wake of the Musket Wars of the 1820s, they had slowly returned by the signing of the Treaty of Waitangi in 1840.

Adapting to the economic opportunities offered by the increasing Pākehā markets during the mid-nineteenth century, Whakatōhea congregated around the Ōpōtiki Harbour in several settlements including the largest, Pākōwhai. The Harbour enabled transport and communication by ship, while the surrounding fertile valleys offered prime lands for crops and livestock desired by Pākehā settlers. Whakatōhea was successful enough to establish their own flour mill and means for shipping goods to Auckland and elsewhere. Supplying the Pākehā markets resulted in an increased material wealth, including European-style household items and farming equipment, and horses.

By the 1860s, Whakatōhea could be described as a prosperous iwi, with the fertile lands of the north-eastern Bay of Plenty the basis for that prosperity. Although, the tumultuous state of the North Island in the early to mid-1860s reduced the earning potential of Whakatōhea – they retained much of their material wealth up to the occupation of Ōpōtiki by colonial forces in 1865. How this occupation and the subsequent raupatu removed the base for Whakatōhea prosperity is discussed in chapter 3 of this report.

Until the 1860s, the north-eastern Bay of Plenty had remained largely isolated from Pākehā and colonial authority. The main exception to this were Pākehā missionaries. Forms of Christianity began taking root in the north-eastern Bay of Plenty from 1834, with the return of the converted Māori prisoners of the Musket Wars. Anglican and Catholic missions were established from the 1840s and

---

<sup>117</sup> Te Ūpokorehe are often considered an iwi of their own, but continue to hold close association with Whakatōhea

had substantial Māori adherents in the region by the 1860s under Reverend Völkner and Father Garavel, respectively.

Although little fighting occurred in the region and few Māori from the area were physically involved in the fighting, the Taranaki and Waikato Wars of the early 1860s caused disruption in the north-eastern Bay of Plenty. At least some within Whakatōhea proclaimed an alliance with the Kīngitanga in early 1864, joining with the Tai Rāwhiti taua, which culminated in the Battle of Kaokaoroa. These events likely cemented that animosity between the 'loyal' Te Arawa and Whakatōhea, and the Government's perception of Whakatōhea as 'rebels'. The events also fed a distrust of Völkner among some Māori in the Bay of Plenty, as he was known to be supplying the Government with intelligence of Māori movements and allegiances.

Amid the disruption of the Waikato and Taranaki Wars, a wavering economy, disease, and an increasing questioning of Völkner, a ripe breeding ground was fostered for the arrival of Pai Mārire emissaries in early 1865, and events which would lead to the killing of Reverend Völkner and the occupation of Ōpōtiki by colonial forces.

## Chapter Three: Unrest and Military Response

### 3.1 Chapter introduction

The first part of this chapter lays out the events which led to the government's military occupation of the north-eastern Bay of Plenty in late 1865. This provides important context for the consideration of why land was confiscated and returned as compensation in proceeding years.

It begins by discussing the introduction of Pai Mārire to Ōpōtiki and how the rising influence of the religious movement, coupled with the growing distrust Whakatōhea had for Reverend Völkner, led to his execution, the killing of James Fulloon and the crew of the *Kate* in Whakatāne, and the subsequent occupation of Ōpōtiki by colonial forces.

The second part of this chapter details the military landing and Ōpōtiki campaigns in pursuit of Pai Mārire adherents and the killers of Völkner and Fulloon, and the subsequent court cases and convictions of those suspected of the murders. The focus is on those activities and persons from within the North-Eastern Bay of Plenty Inquiry District.

Much of this material has been discussed in previous Waitangi Tribunal reports and research reports commissioned for Waitangi Tribunal inquiries, as well as secondary texts such as Ranginui Walker's *Ōpōtiki-Mai-Tawhiti*, Paul Clark's *Hauhau*, Bryan Gilling's Whakatōhea report, Ron Crosby's *Kūpapa* and James Cowan's *The New Zealand Wars*.<sup>118</sup> This chapter is informed by the work of these historians, particularly Gilling, but also draws on official government publications including the *Appendices to the Journals of the House of Representatives* (AJHR), the *New Zealand Gazette*, the communications of officials and court testimony to provide further context.

---

<sup>118</sup> Bryan Gilling, 'Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994); Cathy Marr, 'A Report Commissioned by the Waitangi Tribunal on the Background to the Tuwharetoa Ki Kawerau Raupatu Claim', (commissioned research report, Wellington: Waitangi Tribunal, 1991); Tom Bennion & Anita Miles, 'Research Report: Ngati Awa and Other Claims (Wai 46 & Others)' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, 1995); Jane Luiten, 'Historical Research Report for Te Runanga o Tuwharetoa Ki Kawerau' (commissioned research report: Te Runanga O Tuwharetoa Ki Kawerau, 1995); Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999); Walker, *Ōpōtiki-Mai-Tawhiti*; Judith Binney, *Encircled Lands: Te Urewera, 1820-1921* (Wellington: BWB, 2009); Ron Crosby, *Kūpapa: The Bitter Legacy of Māori Alliances With the Crown* (Auckland: Penguin, 2015)

## 3.2 Part one: The killing of Völkner and Fulloon

### 3.2.1 Rise of Pai Mārire

Pai Mārire was a Māori prophetic movement founded when the Archangel Gabriel visited prophet Te Ūa Haumene in a vision in September 1862.<sup>119</sup> The resulting religion combined elements of Christianity and Māori religion, with a strong emphasis on peace, and gained a number of Māori adherents over the following years, particularly in Taranaki and northern Whanganui areas.<sup>120</sup> Paul Clark argues that Pai Mārire and other Māori prophet movements were a response to the changes in Māori society following contact with Pākehā. Such movements, 'aimed at coming to terms with what was happening to their society', were the means through which Māori could control and regulate change on their own terms. This synthesis of the old and the new, Māori and Pākehā ideas, found similar expression in the Kīngitanga movement.<sup>121</sup> Both were means of navigating a new and changing world.

In the minds of Pākehā settlers and the Government, however, Pai Mārire (or 'Hauhauism' as it was also known) became associated with 'fanaticism and an alleged reversion to barbarity', due to a series of incidents involving the deaths of Pākehā at the hands of Pai Mārire followers.<sup>122</sup> Efforts to put down Pai Mārire meant it lasted only a few years as a discrete religious movement before Te Ūa was captured. However, it was a source of inspiration for future Māori prophets and religious movements, which shared links back to the theology of Pai Mārire.<sup>123</sup>

Despite Te Ūa advocating for peaceful solutions in Taranaki and elsewhere, in April 1864 a group of Pai Mārire attacked a party of British troops destroying crops near Tātaramaka (Taranaki), resulting in the death of four troops and the decapitation of Captain Thomas Lloyd.<sup>124</sup> In December of that year, in an apparent attempt to unify the different iwi, Te Ūa instructed emissaries to travel to the four corners of 'Canaan', from Taranaki to Whanganui, to Taupō, Te Urewera, Tūranganui and on to the East Coast.<sup>125</sup> The dried head of Lloyd was carried by the emissaries and appears to have been ritualistically used as a prop to facilitate the removal of the perceived power of the British military and men.<sup>126</sup>

---

<sup>119</sup> Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity* (Auckland University Press, Auckland: 1975), p 6

<sup>120</sup> Atholl Anderson, Judith Binney, & Aroha Harris, *Tangata Whenua* (Wellington: BWB, 2015), pp 238-239; Binney, *Encircled Lands*, pp 73-74; Lyndsay Head, 'Te Ua Haumēne', *Dictionary of New Zealand Biography* (Wellington: Allen & Unwin, 1990); Clark, *'Hauhau'*, pp 76-78

<sup>121</sup> Clark, *'Hauhau'*, pp 108-109

<sup>122</sup> Clark, *'Hauhau'*, p 12

<sup>123</sup> Clark, *'Hauhau'*, pp 105-108

<sup>124</sup> Anderson, Binney & Harris, *Tangata Whenua*, pp 238-239

<sup>125</sup> Anderson, Binney & Harris, *Tangata Whenua*, pp 238-239; Binney, *Encircled Lands*, pp 73-74

<sup>126</sup> Binney, *Encircled Lands*, pp 74-75

### 3.2.2 Pai Mārire in the Bay of Plenty

Two of Te Ūa's emissaries, Kereopa Te Rau (Ngāti Rangiwewehi, Te Arawa) and Patara Te Raukauri (Taranaki) arrived in the Bay of Plenty, via Tauaroa, in February 1865. Arriving in Whakatāne on 18 February, a 'kati' was immediately instituted, stopping all shipping entering the port. Kereopa and Patara's party then journeyed to Ōpōtiki, arriving one week later, on 25 February 1865.<sup>127</sup> En route, Kereopa and Patara's party of about 40 Pai Mārire and 150 Ngāti Awa (led by Wēpiha Te Poono) were joined at Ōhiwa Harbour by an estimated 10 Whakatōhea, including Mokomoko (a rangatira of Ngāti Patu).<sup>128</sup> On their arrival in Ōpōtiki they also placed a blockade on the Ōpōtiki Harbour.

Historians have suggested that Whakatōhea were especially susceptible to their message due to very recent setbacks for the iwi. Walker and Gilling speculate that the defeat at Kaokaoroa and the death of Te Āporotanga and other rangatira left Whakatōhea 'dispirited' in the aftermath of these events.<sup>129</sup> Cultivations, the backbone of the Ōpōtiki economy, had been somewhat neglected in the absence of the labour of those who had participated in the Tai Rāwhiti taua. There was also an outbreak of some form of disease, which Walker has identified as typhoid fever and measles, and which killed some 150 people.<sup>130</sup>

In part as a result of this disaffection and diminished leadership, it appears that Kereopa was able to attract a great deal of interest in the Pākōwhai and surrounding settlements in Ōpōtiki. He performed a service around a niu pole, 'declaring the new order' and denouncing the Anglican Church.<sup>131</sup> This set in motion the events which would lead to Völkner's death on 2 March 1865. The details of this incident and its consequences are discussed in more depth in subsequent chapters of this report.

### 3.2.3 Who was Carl Völkner?

Carl Sylvius Völkner had first arrived in New Zealand in 1849 as a missionary for the North German Missionary Society. In 1852 he joined the Church Missionary Society (CMS) as a lay teacher working in Taranaki, Waikato, and Waerenga-ā-Hika (near Gisborne).<sup>132</sup> In August 1861, after becoming an ordained priest, Völkner was charged with the CMS mission station in Ōpōtiki.<sup>133</sup>

---

<sup>127</sup> Miss Wallace, 'Extract of a letter from Miss Wallace', Whakatane, 21 February 1865, AJHR, 1865, E-5, p 3

<sup>128</sup> Mokomoko's presence in Whakatāne is debated by Walker, *Ōpōtiki-Mai-Tawhiti*, pp 80 & 82; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 41; Evidence of Wepiha Te Pono Apanui and Joseph Jeans, minutes of proceedings and trial of *R v Mokomoko and Others*, ACGS 16221 J22 2 / 3B, ANZ, Wellington

<sup>129</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 81; Gilling, 'Te Raupatu O Te Whakatohea', p 25

<sup>130</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 81-2

<sup>131</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 83

<sup>132</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 70

<sup>133</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 9



As previously discussed, many Māori in the area had taken up Christianity after those slaves taken by Ngāpuhi during the raids of the Musket Wars returned as converts, meaning many were open to the messages of the CMS. By 1865, Völkner had established a sizeable church and congregation of Whakatōhea locals. Völkner left Ōpōtiki to visit Auckland in early 1865.<sup>134</sup>

Gilling suggests that during this period, there was some 'residual affection' for Völkner and his mission work.<sup>135</sup> While, A C Lyall asserts that at this time, Völkner enjoyed the 'respect and confidence' of Whakatōhea.<sup>136</sup>

#### 3.2.4 Killing of Völkner

The Ōpōtiki blockade put in place by the Pai Mārire emissaries after their arrival was intended, in part, to prevent the return of Anglican missionary Carl Völkner. For reasons discussed below, some of Völkner's congregation had turned against him. On 1 March 1865, Völkner returned from Auckland where he had visited Sir George Grey, aboard the schooner *Eclipse* with Reverend Thomas Grace. Völkner had returned despite threats from Whakatōhea that he would not be safe in Ōpōtiki if he continued to report to the government. Patara wrote a letter to Völkner to this end after arriving in Ōpōtiki.<sup>137</sup> It is not known if this letter was ever sent or received by Völkner prior to his departure from Auckland.<sup>138</sup> However, Völkner's wife Emma remained for her safety in Auckland.

In Völkner's absence Kereopa and Patara had had several days to preach Pai Mārire to the Whakatōhea people. During this time, in advocating for Pai Mārire, Kereopa is known to have spoken out against the actions and words of Church ministers, including Völkner.<sup>139</sup>

Patara had left for Tōrere to persuade Ngāitai to join him, so was not actually in Ōpōtiki when Völkner arrived but had left instructions that no Pākehā were to be interfered with during his absence.<sup>140</sup>

As the *Eclipse*, captained by Morris Levy, arrived at the landing in Ōpōtiki on the morning of 1 March 1865, the schooners' occupants were greeted by a large gathering of Pai Mārire. Before they were

---

<sup>134</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 9

<sup>135</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 9

<sup>136</sup> Lyall, *Whakatohea of Opotiki*, p 153

<sup>137</sup> James Cowan, *The New Zealand Wars & The Pioneering Period, 1864-72*, vol 2 (Wellington: Government Printer, 1983), p 74

<sup>138</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 44

<sup>139</sup> S A Levy journal, 25 Feb 1865 in CMS pamphlet, *The Murder of the Rev C S Volkner, in New Zealand* (London: Church Missionary House, 1865), p 5; Clark, 'Hauhau', p 40

<sup>140</sup> Clark, 'Hauhau', p 21; Walker, *Ōpōtiki-Mai-Tawhiti*, p 82

able to land the schooner was boarded and taken over by the Pai Mārire group, with its occupants including Völkner and Grace ordered to stay on board.<sup>141</sup>

While on the ship, Völkner's Ōpōtiki house was broken into and his property auctioned and distributed among those onshore.

On the afternoon of 1 March, all passengers were ordered ashore. Völkner, Grace and the sailors were eventually taken to a house. Although there were plenty of Māori around to keep watch, the house was not guarded, and they appear to have been able to come and go as they pleased.<sup>142</sup> At one point they even retrieved their personal belongings which had been taken from the ship and stored in the confiscated general store of Samuel Levy.

While the men were held up in the house, extensive discussions as to their fate were taking place in the nearby Roman Catholic chapel. Gilling indicates that in attendance at these discussions were local Ōpōtiki rangatira Mōkena, Pōkeno, Te Ahi Tapu, Keha, Te Waekahu Rānapia, Tīmoti, Hakaraia, Te Ranapia, Te Piahana Tiwai and Rāpata Wīwini.<sup>143</sup>

There are no reliable accounts of how it was decided that Völkner would be killed or of who was involved in making that decision. However, during these discussions it was decided that Völkner would be hanged the next day, while Grace would be kept as a prisoner until the return of Patara. In some accounts, there was a vote in which the majority of Māori present in the chapel voted in favour of Völkner's hanging. In contrast, Whakatōhea rangatira Tiwai and Te Ranapia are noted exceptions who voted against the hanging.<sup>144</sup>

Later, Joseph Jeans, a Portuguese resident of Ōpōtiki, claimed to have discussed ideas of how to have the two missionaries released with Te Ranapia, but when Te Ranapia raised the possibility with Kereopa the idea was rejected outright.<sup>145</sup> The next morning, 2 March 1865, Te Ranapia attempted to reason with Kereopa again unsuccessfully. That afternoon, when Völkner was brought out Te Ranapia attempted to physically intervene in proceedings but was prevented from approaching the scene.<sup>146</sup>

---

<sup>141</sup> S J Brittan, C W Grace & A V Grace (eds.), *A Pioneer Missionary Among the Maoris, 1850-1879: Being Letters and Journals of Thomas Samuel Grace* (Palmerston North: G H Bennett & Co, 1928), p 135; David Grace, *A Driven Man: Missionary Thomas Samuel Grace, 1815-1879: His Life and Letters* (Wellington: Ngaio Press, 2004), p 171

<sup>142</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 84-85

<sup>143</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 30

<sup>144</sup> S Barton Babbage, *Hauhauism: An Episode in the Maori Wars, 1863-1866* (Wellington: Reed Publishing, 1937), p 50

<sup>145</sup> Jeans is the name used throughout this report, however, sources variously referred to him as Jahus and Jennings. Grace, *A Driven Man*, pp 172-173

<sup>146</sup> Grace, *A Driven Man*, p 173

The *Ngāti Awa Raupatu Report* summarises the events which followed:

... Kereopa sentenced Volkner to death in his church. He was escorted outside by a party of about 30, taken to a tree, where he was hanged, and in one account his body was then shot. Afterwards, the body was decapitated and various people drank his blood from a church chalice. Taking the head inside the church, Kereopa gouged out the eyes. Naming one for the Parliament of England and the other for the Queen and English law, he then swallowed them.<sup>147</sup>

Völkner's head was preserved and was carried by Kereopa when he left for Tauaroa.<sup>148</sup>

What happened to Völkner appears to have been instigated by Kereopa and undertaken by local Whakatōhea and visiting Ngāti Awa. However, it would be incorrect to suggest the action was carried out or supported by all Whakatōhea, as is exemplified by the multiple attempts by Te Ranapia to reason with Kereopa.

Whakatōhea were not uniform in their desire to have Völkner killed, or their participation in his execution. Walker indicates that Ngāti Ngahere and Ngāti Ira disapproved of his execution outright.<sup>149</sup> Joseph Jean's wife reported that the Catholic hapū also disapproved, likely meaning many if not all of Ngāti Rua and at least some of Ngāti Patu were opposed. James Cowan states the Ngāi Tama hapū were supportive of Kereopa's actions.<sup>150</sup> Further, Walker states Mokomoko's section of Ngāti Patu were aligned with the Pai Mārire while other sections were not.<sup>151</sup>

It is important to note that Mokomoko would be found guilty and executed for participating in Völkner's execution. Mokomoko maintained his innocence throughout his trial and execution and after much petitioning by his descendents he was given a free pardon in 1992. This pardon was given statutory recognition in 2013 restoring the 'character, mana, and reputation of Mokomoko and his uri'.<sup>152</sup>

---

<sup>147</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 41; The differing perspectives and the exact details of the events of 2 March 1865 are discussed further in Gilling, 'Te Raupatu O Te Whakatohea', pp 30-35

<sup>148</sup> Cowan, *The New Zealand Wars* vol 2, p 76

<sup>149</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 87

<sup>150</sup> Cowan, *The New Zealand Wars* vol 2, p 76

<sup>151</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 87

<sup>152</sup> Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013

### 3.2.5 Why Völkner?

Several possible motivations, have been suggested for the killing of Völkner.<sup>153</sup> It appears that the Māori community of Ōpōtiki (principally Whakatōhea) who had embraced Völkner in prosperity had begun to question him as their prosperity diminished in the face of war and disease. The arrival of Te Ūa's emissaries hardened these views and happened to coincide with the return of Völkner.

Völkner was well-known by Māori at this time to have been acting as a government informant through letters and visits with Governor Grey.<sup>154</sup> The government commonly demanded missionaries and officials provide intelligence on the state of local hapū allegiance and movements to the Crown.<sup>155</sup>

Völkner, as a representative of the Governor, was seen to have failed to condemn the execution of Whakatōhea ariki (high chief) Te Āporotanga (Ngāti Rua) after the Battle of Kaokaoroa.<sup>156</sup> Te Āporotanga had been captured by an Arawa force at the battle on 28 April 1864 when the party of Whakatōhea, Ngāti Porou and others moved inland in an attempt to join the Waikato forces. Whakatōhea considered the execution to be murder.<sup>157</sup> In a letter to his bishop, Völkner claimed the death of Te Āporotanga had had a profound impact on Whakatōhea, who also blamed the Governor for failing to condemn the perpetrators.<sup>158</sup>

Völkner's accusations of treason against Father Garavel in December 1863 also incited Whakatōhea against Völkner. Garavel was subsequently removed from Ōpōtiki by Bishop Pompallier at the request of the Government in April 1864. Garavel, the locally well-respected Catholic missionary, had arrived in Ōpōtiki from Rangiaowhia on Christmas Day 1863 to impart Pompallier's thoughts on the war in the Waikato to Bay of Plenty Māori. Garavel had carried with him a letter from Wiremu Tamihana for Whakatōhea which led to their decision to join the Kīngitanga fight.<sup>159</sup> It was rumoured at the time that Garavel had been executed in Auckland.<sup>160</sup> Clark has described Māori anxiety over the fate of Garavel as a small motivating factor in Völkner's execution, but that any emphasis on the role of Garavel is misplaced 'sectarian controversy' from Protestant Pākehā settlers seeking to interpret Pai Mārire as a product of 'popish delusion'.<sup>161</sup> However, Joseph Jeans, a te reo Māori speaking

---

<sup>153</sup> Clark, *'Hauhau'*, pp 31-32

<sup>154</sup> Clark, *'Hauhau'*, pp 36-37; Völkner's letters to Grey are published in 'Rev C. S. Volkner and the Tai Rawhiti Expedition, 1864', *Historical Review* (Whakatane and District Historical Society), vol 7, no 2, June 1959, pp 24-36

<sup>155</sup> Anderson, Binney & Harris, *Tangata Whenua*, p 240

<sup>156</sup> Ewan Johnston, 'Wai 203 & 339 Scoping Report', p 15

<sup>157</sup> Ewan Johnston, 'Wai 203 & 339 Scoping Report', p 15

<sup>158</sup> Völkner to Bishop William Williams, 22 January 1865, McLean Papers, MS-Papers-0032-0018, McLean-1002630, ATL, Wellington; Clark, *'Hauhau'*, p 36

<sup>159</sup> Clark, *'Hauhau'*, p 34

<sup>160</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 87

<sup>161</sup> Clark, *'Hauhau'*, pp 34-35

Portuguese witness noted that the Ngāti Rua Māori Catholic converts in Ōpōtiki had refused to participate in the execution of Völkner, or later rituals with his remains.<sup>162</sup>

When Garavel returned to Ōpōtiki from Auckland in mid-1864, before his departure to Sydney, he found that Catholic and Protestant Whakatōhea alike were convinced Reverend Völkner was a Government spy.<sup>163</sup>

A suggested motivation for Kereopa instigating the hanging of Völkner was the death of Kereopa's relatives. Kereopa's wife and two daughters are said to have been burnt alive during the British attack on Rangiaowhia in February 1864.<sup>164</sup> In attendance with the British troops at Rangiaowhia was Bishop George Selwyn. Selwyn had previously provided Governor Grey a detailed plan of Rangiaowhia pā.<sup>165</sup> The 1865 deposition from Eruera Tutawhia indicates that Kereopa did hold considerable animosity towards missionaries.<sup>166</sup> It is posited that Völkner, as a missionary in his own right, if not as a missionary of Selwyn's, became a target for Kereopa.

According to Clarke, the first messenger to reach Poverty Bay suggested that Völkner had been killed on account of his trips to Auckland in which he had 'stirred the Pakehas to fight'.<sup>167</sup>

A different motivation for Kereopa, as indicated by Patara, was tribal utu. Patara suggested that Kereopa anticipated and relished the possibility that Völkner's death would encourage colonial forces to attack Whakatōhea, as traditional enemies of Te Arawa.<sup>168</sup>

In his memoir of the New Zealand Wars, Morgan S Grace, a medical officer with the New Zealand Forces in 1865, claimed to have heard an account of Völkner's hanging from Pai Mārire prisoners:

We executed him according to law. He was fairly tried in our runanga-house, openly confronted with his own letters giving information to the soldiers, our enemies. He was one of our people; we had adopted him into our tribe. He acknowledged the adoption, and lived with us for many years. He was a traitor, and we hanged him according to the law of nations.<sup>169</sup>

---

<sup>162</sup> Clark, 'Hauhau', p 34; The statement by Jeans is reproduced in J Mackay, 'Statement of Joseph Jeans(?) Jennings, Portuguese, Resident at Opotiki', June, AJHR, 1865, E-5, pp 16-18

<sup>163</sup> Clark, 'Hauhau', p 38

<sup>164</sup> Clark, 'Hauhau', pp 34-35

<sup>165</sup> Clark, 'Hauhau', p 35

<sup>166</sup> Deposition of Eruera Tutawhia, 9 May 1865, ACGO 8333 IA1 265 / [18] 1865/1339; Clark, 'Hauhau', p 35

<sup>167</sup> Clarke, 'Hauhau', p 36

<sup>168</sup> Clarke, 'Hauhau', p 36

<sup>169</sup> Morgan S Grace, *A Sketch of the New Zealand War* (London: Horace Marshall and Son, 1899), p 151

In a collective letter to the Government supposedly signed by the 'Komiti' of Ngāti Awa, Whakatōhea, Taranaki and 'Te Urewera' (Tūhoe) on 6 March 1865 following the killing of Völkner, the rationale for his death was explained:

Friends, this is a word to you. Mr Volkner, Minister is dead. He has been hung according to the laws of the new Canaan in the same manner it has been ordained by the Parliament of England that the guilty man be hung . . . This alone is the cause; firstly, the deception practised upon our island by the Church. That Church said they were sent hither by God; but now we are aware that they were sent hither by the knowing Society of the Church of England; secondly, the sin of the Governor at Rangiriri, - his murder, the women are dead; thirdly, Rangiaohia, where the women were shot; that is now an unalterable law of the Governor's. We are now aware, with regard to those laws, that they were made by the authority of England. Why is not the Governor ashamed? . . . Friends our island is now aware of your doings. Listen. You catch the Maoris, we kill the Pakehas. You hang the Maoris, we hang the Pakehas.<sup>170</sup>

Judith Binney states the authors are unknown but deduces the 'Komiti' to be the same group which determined Völkner would die and hanged him a few days earlier on 2 March 1865.<sup>171</sup>

Alternatively, when first published in the AJHR the letter was translated as follows:

Friends; this is a word to you. Mr Volkner, Minister is dead. He has been crucified according to the laws of the New Canaan, in the same manner as it had been ordained by the Parliament of England, that the guilty man be crucified. Mr Grace, Minister, is captured, and is in the prison house of the law of the New Canaan, which was arranged by us in the same manner as that which the parliament of England instituted, that the guilty man be imprisoned.

Friends, do not you say, "What is the origin of that sin?" This alone was the origin—the deception practised upon our island by the Church. That Church said that they were sent hither by God; but now we are aware that they were sent hither by the knowing society of the Church of England. In the second place, the sin of the Governor at Rangiriri—his cruelty—the women are dead. Thirdly, Rangiaohia [sic], the women were shot—that is a sacred law of the Governor's.

We are now aware, with regard to those laws, that they were made by the authority—suppressing committee (Parliament) of England. Why is not the Governor ashamed at the great number of his authorities suppressing (laws) laws, practising deception upon our bodies? You say, again, to me that I must give up my guns and powder to you. You perhaps thought to treat us like pigs—you perhaps

---

<sup>170</sup> 'Letter from chiefs of Whakatohea', in William Colenso, 'Fiat Justitia', (Napier: 1871), reprinted *Hawkes Bay Herald*, Napier, 1871 in Walker, *Ōpōtiki-Mai-Tawhiti*, pp 89-90

<sup>171</sup> Binney, *Encircled Lands*, p 77

wished us to give up our guns lest we shoot you. You perhaps think it is not possible to kill men with wooden weapons.

Friends, our island now is aware of your doings. Listen. You catch the Maories; I also kill the Pakehas. You crucify the Maories, and I also crucify the Pakehas. But now release (unto us) Hori Tupaea and his companions, and we will then let go Mr Grace; but if you withhold Hori Tupaea and his companions, we will also withhold Mr Grace.

If you are pleased with my word, give the reply to the Jew [Morris Levy]. He will bring it to me, and we will also give up Mr Grace. That is all our word.

The Committee of—

Ngatiawa,

Whakatohea,

Urewera,

Taranaki.<sup>172</sup>

### 3.2.6 Trial of Völkner and Grace

In the days that followed, Grace and the sailors and some other local Pākehā and unidentified Māori were under guard at Hooper's house.<sup>173</sup>

Parata returned the evening of 4 March 1865, by which time Kereopa had left for Tūranga. According to Jeans, Parata disapproved of the events which had occurred in his absence.<sup>174</sup> Jeans claimed that Parata assembled the people and declared 'this is Kereopa's work, not mine. This shedding of blood in the grave of Opotiki will bring the Europeans here to kill you'.<sup>175</sup>

In an attempt to justify the execution, on 5 March 1865 Parata carried out a posthumous trial of Völkner within the Hiona St Stephen Church. The accusations brought against Völkner included spying for the Government, being a Roman Catholic deceiver (a cross was found in his house), and returning

---

<sup>172</sup> The Committee of Ngatiawa, Whakatohea, Urewera, Taranaki, 'To the Office of the Government, Auckland', Opotiki, Place of Canaan, 6 March 1865, AJHR, E-5, 1865, pp 9-10

<sup>173</sup> Gilling, 'Te Raupatu o Te Whakatohea', pp 35-36

<sup>174</sup> Brittan, Grace & Grace (eds.), *A Pioneer Missionary Among the Maoris, 1850-1879*, pp 137-140; Grace, *A Driven Man*, p 175

<sup>175</sup> J Mackay, 'Statement of Joseph Jeans(?) Jennings, Portuguese, Resident at Opotiki', June, AJHR, 1865, E-5, pp 16-18; Grace, *A Driven Man*, p 175

to Ōpōtiki despite warnings to stay away. Only the charges of spying and returning to Ōpōtiki were upheld.<sup>176</sup>

Grace too was put on trial, facing hours of interrogation on matters including the veracity of his religion and his reason for visiting Ōpōtiki. Eventually, Patara was satisfied with Grace and it was decided Grace would be held hostage to be exchanged for Hōri Tūpaea. Tupaea was a Ngāi Te Rangī rangatira and Pai Mārire adherent who had been taken captive by Ngāti Pīkiao (Te Arawa) near Lake Rotoiti in February 1865.<sup>177</sup>

### 3.2.7 Escape of Grace

Reports of Völkner's death reached the Civil Commissioner in Tauranga by 6 March 1865, but did not reach Auckland until 8 March 1865. The *Daily Southern Cross* reported at the time that due to the removal of the Executive Government to Wellington, and the absence of Governor Grey, there was no authority to issue a reward for the apprehension of those involved in the killing of Völkner.<sup>178</sup> Governor Grey was visiting Whanganui and would not hear of Völkner's death until 14 March 1865.<sup>179</sup> Instead, on 10 March 1865, Commodore William Wiseman sent the HMSS *Eclipse*, under Captain Freemantle, and carrying Bishop Selwyn, with general instructions to preserve life and property and investigate the killing.<sup>180</sup> After first visiting Turanga, the HMSS *Eclipse* returned up the coast, arriving at Ōpōtiki on the morning of 16 March 1865. The ship was first met by the Levy brothers, who returned to shore where they and some of the crew secured Grace back to the navy ship.<sup>181</sup> By 18 March 1865, Grace and the HMSS *Eclipse* had returned safely to Auckland.<sup>182</sup>

Of his experiences with local Whakatōhea during the events of March 1865, Grace later wrote:

It is due to the natives of Opotiki to say that from the time of our being tied in Hooper's house on the evening of the 2nd I did not receive the smallest indignity from them. They were respectful, some were kind, and now and then a few were cool.<sup>183</sup>

---

<sup>176</sup> Clark, *Hauhau*, pp 36-37

<sup>177</sup> Cowan, *The New Zealand Wars* vol 2, p 79

<sup>178</sup> 'The Late Rev. Carl Sylvius Volkner', *Daily Southern Cross*, 9 March 1865, p 4; Henry T Clarke, 'The Civil Commissioner, Tauranga, to the Hon Native Minister', 6 March 1865, AJHR, 1865, E-5, pp 4-5

<sup>179</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 91

<sup>180</sup> It is worth noting the schooner *Eclipse* which carried Völkner to Ōpōtiki, and the Royal Navy's HMSS *Eclipse* which was despatched to investigate his death were distinct vessels. 'Saturday, March 11', *Daily Southern Cross*, 11 March 1865, p 4; Walker, *Ōpōtiki-Mai-Tawhiti*, p 89

<sup>181</sup> Grace, *A Driven Man*, pp 179-181

<sup>182</sup> Henry E Rice, 'Mr H E Rice to the Hon The Native Minister', 29 March 1865, AJHR, 1865, E-5, p 8

<sup>183</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 89



However, local Māori expected there to be retribution of some kind. When Patara returned to Ōpōtiki in March 1865 to find Völkner killed, he correctly predicted that Völkner's death would lead to Pākehā seeking retribution.<sup>184</sup>

On 29 April 1865, Governor Grey issued a proclamation allowing 'well-disposed persons, whether Native or European, to aid and assist' him to 'resist and suppress, by the force of arms if necessary' those involved in the 'fanatical doctrine' of Pai Mārire.<sup>185</sup> Investigations by the Waitangi Tribunal failed to identify an enactment which would have given the legal authority necessary to legitimise such a far-reaching proclamation. However, the Tribunal also found no evidence of the proclamation being implemented prior to the Fulloon killings.<sup>186</sup>

### 3.2.8 Killing of Fulloon

Little further action was taken by the Government regarding Völkner's death in the Bay of Plenty until James Te Mautaranui Fulloon (sometimes Falloon) and most of those onboard the *Kate* were killed and the vessel burned in the Whakatāne River in July 1865. Fulloon (Ngāti Awa, Tūhoe) had previously worked for Governor Grey as an interpreter, informant and messenger. Although the killing of Fulloon and much of the pursuit for his killers was undertaken outside of the North-Eastern Bay of Plenty Inquiry District, this information is included here as important context for the later actions of the Government across the wider north-eastern Bay of Plenty district.

In May 1865, Fulloon and Whakatōhea rangatira Tiwai had been sent to the Bay of Plenty on the HMSS *Eclipse* to seek out information regarding the whereabouts of Kereopa and to facilitate his capture. Fulloon met with his cousin Wepiha Apanui (Ngāti Awa) in Whakatāne, as well as Paora Taia (Whakatōhea), who accompanied the ship to Ōpōtiki. Whilst in the areas of Ōhiwa and Ōpōtiki the crew of the HMSS *Eclipse* made attacks on pā to little effect, including at Tunapahore.<sup>187</sup> However, Fulloon returned to Auckland having achieved little and with no arrests.<sup>188</sup>

Fulloon quickly returned to the Bay of Plenty in what historian Judith Binney has described as a

new and more energetic government strategy for the eastern Bay of Plenty [which] coincided with – and must have related to – Fulloon's military plans and recent promotion. It was part of a wider

---

<sup>184</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 88

<sup>185</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 54; NZ Gazette, 29 April 1865, no 14, p 129

<sup>186</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 54

<sup>187</sup> A Agassiz, 'Memorandum of a Statement made by Mr A Agassiz, of Opotiki, Respecting Kereopas Proceedings, and the Murder of Mr James Fulloon, Etc.', 21 August 1865, AJHR, 1865, E-5, pp 18-19; Parham, *Fulloon*, pp 61-64; 'The Arawas and the Maori Prisoners', *Daily Southern Cross*, 2 May 1866, p 4

<sup>188</sup> Binney, *Encircled Lands*, pp 80-81

campaign, orchestrated by Harry Atkinson, Minister of Defence, and Donald McLean, agent for the general government on the East Coast, where the push had already begun.<sup>189</sup>

Following his efforts in the Bay of Plenty in May, Fulloon had been seconded to 'special services' for the Government in June, and subsequently promoted to the rank of captain in the militia.

Fulloon arrived in Whakatāne on the *Kate* on 22 July 1865. The ship's arrival in Whakatāne waters crossed an aukati line put in place by Pai Mārire emissaries to establish a 'zone of peace', it was intended to exclude those with hostile intentions on threat of death.<sup>190</sup> It is clear that Fulloon's intentions could be interpreted as hostile. He was known to be concerned with locating Völkner's killers. His stated intention was to raise local forces against the 'rebels', and he was dressed in a military uniform.<sup>191</sup> Additionally, at one point he directed a whakapohane at the Ngāti Awa, Whanau-a-Apanui, and Pai Mārire from Taranaki who had boarded the *Kate* to confront those aboard regarding the breach of aukati.<sup>192</sup> The boarding party returned to shore.

However, that night a group of 20 Pai Mārire (which likely included at least members of Ngāti Awa and Te Whānau-ā-Apanui) under orders from Horomona (Taranaki) and Te Hura Te Taiwhakaripi (Ngāi Te Rangihouhiri, Ngāti Awa) reboarded the ship. During which time, Fulloon and three members of the crew were killed and the ship burned. The Māori crew members and the vessel's Pākehā owner were spared.<sup>193</sup> As well as punishment for crossing the aukati, Te Hura later claimed that shooting Fulloon was an act of revenge and war following the killing of Te Hura's brother at Tunapahore by a landing party of the HMSS *Eclipse* in May.<sup>194</sup> Hirini Moko Mead and Jeremy Gardiner suggest Ngāti Awa considered it a just 'sentence' under Māori custom, but the Government ultimately considered it 'murder'.<sup>195</sup>

### 3.2.9 Response to the killing of Fulloon

Smith, as Civil Commissioner of Maketū, first learned of the Fulloon killings on 29 July. A week later, on 2 August 1865, Smith issued a warrant for the arrest of those persons allegedly involved in the

---

<sup>189</sup> Binney, *Encircled Lands*, p 85

<sup>190</sup> Binney, *Encircled Lands*, p 86

<sup>191</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 49

<sup>192</sup> Whakapohane involves the exposure of buttocks and is generally considered a gesture of contempt. *New Zealand Herald*, 16 March 1866, p 5; Lt-Gen Cameron to Earl Grey, 4 September 1865, in 'Parliamentary Papers', *Daily Southern Cross*, 11 May 1866, p 4; Binney, *Encircled Lands*, p 86

<sup>193</sup> The Ngāti Awa perspective of Fulloons killing is available in *Ngati Awa Raupatu Report*, pp 44-51 & 'The Trials', vol.1, report prepared by Ngāti Awa for Waitangi Tribunal, 1994, Wai 46, C10

<sup>194</sup> 'The Arawas and the Maori Prisoners', *Daily Southern Cross*, 2 May 1866, p 4

<sup>195</sup> Hirini Moko Mead & Jeremy Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngāti Awa Experience of Raupatu' (commissioned research report: Te Runanga o Ngati Awa, 1994), Wai 46, A18, p 78

killing of Fulloon under the Native Circuit Courts Act 1858 and Native District Regulation Act 1858. The warrant was therefore issued under civil law.<sup>196</sup> The warrant and its impact are discussed in depth by Moko Mead and Gardiner in their research report for the Ngāti Awa inquiry 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngāti Awa Experience of Raupatu'. Moko Mead and Gardiner state that in issuing the warrant, Smith acted alone with 'virtually no effective central Government to consult' because of the capital's move to Wellington and the rift between Governor Grey and his ministers.<sup>197</sup> Without consulting his superiors, Smith wrote to Gilbert Mair (in Rotorua) requesting Mair and his men and a force of Te Arawa (in Maketū) be deployed to Te Awa o te Atua (Matatā) to pursue and capture those 35 Māori named on the warrant.<sup>198</sup>

Throughout August 1865, several hundred Te Arawa and others from Ngāti Raukawa, Ngāti Rangitahi, Ngāti Manawa, Ngāti Hinehua and Tuhourangi were involved with Mair in a number of skirmishes and the siege of pā against Te Hura and his Ngāti Awa associates.

Te Arawa forces assisted the Crown in part to enact Te Arawa's own vengeance against Ngāti Awa for previous battles and the impounding of the *Mariner* (their trading vessel at Whakatāne). For their assistance Te Arawa were later rewarded by the Crown with disputed Ngāti Awa lands.<sup>199</sup> The confiscation of this land and awarding of title to Te Arawa is discussed in chapters 4 and 5 of this report.

Fulloon had been assisting the planning of a Crown military campaign against Pai Mārire in the Bay of Plenty in the wake of Völkner's death. Fulloon's own death immediately intensified the campaign of the government-allied Māori forces who were already in the eastern Bay of Plenty. The allied-Māori forces were tasked with capturing those thought responsible for the killings of Völkner and Fulloon. Despite the small number involved in the killings of Völkner and Fulloon, the acts were treated as 'rebellion' by the Government and whole communities (including those not actively opposed to the Crown), rather than the individuals, became targets for colonial military action.<sup>200</sup>

News of the killing of Fulloon increased demands from the colonial press for a military response to Völkner and now Fulloon's killings.<sup>201</sup> The Government response, which is discussed below, was two-pronged. The Government's first prong targeted Ngāti Awa and was primarily located inland of Matatā, as far as Te Teko, and utilised troops largely raised from Te Arawa with some Ngāti

---

<sup>196</sup> Mead & Gardiner report, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', pp 79 & 82

<sup>197</sup> Mead & Gardiner report, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa', p 79

<sup>198</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 55-56

<sup>199</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 55

<sup>200</sup> Binney, *Encircled Lands*, pp 87-88; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 54-58

<sup>201</sup> Crosby, *Kūpapa*, p 262

Tuwharetoa.<sup>202</sup> The second prong targeted Whakatōhea in Ōpōtiki and extended into the Waimana Valley and to the people of Tūhoe. For this the Whanganui Native Contingent was enlisted. As noted by Crosby, the use of Māori from Whanganui was unique in that it employed Māori troops against Māori in an area ‘completely divorced from their own areas of customary interest, against other Māori who were not traditional enemies’.<sup>203</sup>

In knowledge of the violent history between Te Arawa and Whakatōhea, it is not a surprise that Te Arawa wished to capitalise on Whakatōhea’s misstep. Te Arawa had expressed interest in moving through Ngāti Awa territory to attack Whakatōhea since the Völkner killing in March 1865. However, Ngāti Awa, who also held a tumultuous history with Te Arawa, expressed resistance to their lands being crossed by Te Arawa for such purposes and informed the Government and Te Arawa that any attack on Whakatōhea in Ōpōtiki would need to be made by sea.<sup>204</sup>

By the time of Fulloon’s death Governor Grey understood that he risked losing the support of otherwise loyal Māori across the country if he did not check the continued defiance of the Crown’s authority by Pai Mārire adherents in the north-eastern Bay of Plenty. For such purposes Governor Grey was able to utilise the troops freed up by the easement of conflicts in Whanganui and south Taranaki.<sup>205</sup>

As the pursuit of Fulloon’s killers falls largely outside of the North-Eastern Bay of Plenty Inquiry District, those hostilities are not the focus here. Although the hostilities resulted in few immediate casualties on either side, the perceived ‘rebellion’ resulted in the confiscation of nearly all of Ngāti Awa’s land, much of which went to Te Arawa. A large number of leading Ngāti Awa rangatira were also imprisoned and a further three rangatira were executed for Fulloon’s murder.<sup>206</sup>

### 3.3 Part two: Colonial forces in Ōpōtiki, and the capture and prosecution of murder suspects

#### 3.3.1 Proclamation of Peace and Martial Law

There was no real Government response to Völkner’s death in Ōpōtiki until September 1865, almost six months later. However, in early September 1865, a ‘Proclamation of Peace’ declared the end of the Waikato and Taranaki Wars, but was almost immediately followed by a declaration of martial law

---

<sup>202</sup> Crosby, *Kūpapa*, p 262

<sup>203</sup> Crosby, *Kūpapa*, p 263

<sup>204</sup> Crosby, *Kūpapa*, pp 264-265

<sup>205</sup> Crosby, *Kūpapa*, p 267

<sup>206</sup> Crosby, *Kūpapa*, pp 266-267

in the districts of Ōpōtiki and Whakatāne, which led to colonial forces occupying Ōpōtiki. Both proclamations are included as Appendix 3.

On 2 September 1865, Governor Grey declared an end to the war which had ‘commenced in Oakura’, which is now referred to as the Second Taranaki and Waikato Wars.<sup>207</sup> The proclamation, printed in the *Gazette* on 5 September 1865, claimed the Governor had only taken up arms to protect the European settlements and to punish those Māori who had resorted to violence and now declared peace, as ‘sufficient punishment has been inflicted’. Under the proclamation, no Māori who had previously taken up arms against the authority of the Crown would be prosecuted and no more lands would be taken in relation to their supposed prior ‘rebellion’. However, this amnesty excluded those who were ‘concerned in’ twelve particular murders, the named victims of which included Reverend Völkner and James Fulloon.

Specifically, an expedition would be sent to the Bay of Plenty to arrest those believed to have been involved in the killings of Völkner and Fulloon.

If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.<sup>208</sup>

The pursuit of the killers of Völkner and Fulloon was assisted by the proclamation of martial law in the districts of Ōpōtiki and Whakatāne in September 1865.

### 3.3.2 Martial Law Proclamation

On 5 September 1865 the *Gazette* also proclaimed a martial law over the districts of Ōpōtiki and Whakatāne. Martial law provided the Commander of the Military Forces with ‘summary authority’ and allowed those suspected of the killing of Völkner and Fulloon and those suspected of aiding and abetting them to be tried by courts-martial.<sup>209</sup>

During the pursuit and prosecution of these suspects the Crown was assisted by some Māori of the Inquiry District.

---

<sup>207</sup> Hostilities actually continued in Taranaki until November 1866; The New Zealand Settlements Act 1863, section 5

<sup>208</sup> New Zealand Gazette, 5 Sept 1865, no 35, p 267

<sup>209</sup> In this instance a ‘court-martial’ simply meant a military court, run by military officers under military law. New Zealand Gazette, 5 Sept 1865, no 35, pp 267-268

The colonial and government-allied Māori forces led various expeditions in pursuit of Kereopa, Horomona, Te Hura, and their associates throughout the Bay of Plenty and Urewera districts. These are in-part discussed below.

Walker suggests there was also an ‘unstated assumption’ under martial law that all of Whakatōhea was considered guilty for Völkner’s murder.<sup>210</sup> An example of this can be seen in the treatment of members of Ngāti Patu as rebels, despite it being known that they were not involved in the killing of Völkner.<sup>211</sup>

The Tribunal in the Ngāti Awa report found that:

Though the [martial law] proclamation suggests that the Arawa troops were no longer bound by civilian law and could act as a military force, in fact there is no evidence that the troops were recommissioned. Their authority in the area was still to effect arrests in terms of civil law warrants. They had not been recruited as an army for the purposes of war. Secondly... Te Arawa had in fact been operating as a military force [in the north-eastern Bay of Plenty] for two weeks previously.<sup>212</sup>

### 3.3.3 No opportunity given to local Māori or Pai Mārire adherents to cooperate

Bryan Gilling in his report on the raupatu imposed upon Whakatōhea found that ‘there was no meaningful opportunity provided for Whakatohea to rectify their “sins”, nor any way of clarifying the Government’s exact requirements and demands’.<sup>213</sup> During his research it was suggested to Gilling that rangatira of Whakatōhea had attempted between March and September of 1865 to prove their loyalty to the Crown. However, no evidence of this was seen during his research, or the research for this report.

The Proclamation of Peace was first published on 5 September 1865 in Wellington.<sup>214</sup> Colonial forces arrived just three days later, on 8 September.

There is no evidence that Whakatōhea or other Māori at Ōpōtiki were formally notified of the forces’ impending occupation or the reason for their occupation. There is suggestion that strong winds prevented an earlier departure of the force from Wellington and that this would also have prevented any other ships leaving for the Bay of Plenty which could have carried notice of the Proclamation of Peace.<sup>215</sup>

---

<sup>210</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 94 & 103; Opotiki Native Land Court Minute Books, no 5, p 188

<sup>211</sup> Wai 1775, 1.1.1, para 27

<sup>212</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 60

<sup>213</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 64

<sup>214</sup> The full text is attached at Appendix 3. New Zealand Gazette, 5 Sept 1865, no 35, p 267

<sup>215</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 69

Gilling provides a breakdown from various sources of the events which proceeded the arrival of Colonial troops in the Ōpōtiki Harbour.<sup>216</sup> By day two of the occupation there had still been no apparent communication that the force had arrived 'ostensibly' to capture those involved in the killing of Völkner.<sup>217</sup>

According to Gilling there is no evidence of the colonial forces attempting to communicate their terms with local Māori or Pai Mārire adherents until 17 September, day nine of the occupation. Even then it appears to have only occurred following the initiative of Māori after a messenger (Fulloon's aunt, Te Wai Hapu a Rangi) had come in with a letter from Apanui and Kepatoihau inquiring into the terms of surrender.<sup>218</sup>

A late August attempt by Resident Magistrate R C Mainwaring to negotiate with and quell Ōpōtiki Māori, through Wiremu Tamihana at Whatawhata, were at least impotent.<sup>219</sup> Tamihana, even if he had so desired, could not have transmitted a message to Whakatōhea or the Pai Mārire adherents based in Ōpōtiki before colonial troops arrived.

Crosby has made a direct comparison between the situation that faced the Kīngitanga at Mangatawhiri in 1863 and the Proclamation to Whakatōhea that essentially established a public notice of an already imminent invasion. The invasion of Ōpōtiki was well underway by the time Whakatōhea were made aware of the terms of the Proclamation.<sup>220</sup>

As is discussed below, it appears that the Minister of Defence (Atkinson) favoured a surprise landing of colonial forces (preferably at night) in the hopes of overwhelming any potential opposition and 'seizing the murderers without allowing them an opportunity of resistance'.<sup>221</sup> In this case, the prior warning of Māori in Ōpōtiki of an impending landing of troops would have prevented any chance of a successful mission for the colonial forces.

### 3.3.4 Invasion and occupation of Ōpōtiki by colonial forces

As early as 16 August 1865, Brassey was being briefed for a colonial military response in Ōpōtiki for the 'murders' of Völkner and Fulloon.<sup>222</sup> On 4 September, the day Major Willoughby Brassey and his

---

<sup>216</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 69-72

<sup>217</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 70

<sup>218</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 70 & 74

<sup>219</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 93

<sup>220</sup> Crosby, *Kūpapa*, p 268

<sup>221</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 94; Gilling, 'Te Raupatu O Te Whakatohea', p 68; Defence Minister Atkinson to Major Brassey, 4 September 1865, AAYS 8643 AD6 7 / 1865 – 1866, ANZ, Wellington

<sup>222</sup> J Holt to Major Brassey, 16 August 1865, AAYS 8643 AD6 7 / 1865 – 1866, ANZ, Wellington

troops were expected to leave Wellington for Ōpōtiki, he received a letter from Defence Minister Atkinson outlying the intentions for the operation:

...in the first place it is necessary that I should inform you that the object the Government have in view is, the apprehension of the murderers of the Revd Mr Volkner, Mr Fulloon and other persons; and their desire that this should if possible be accomplished without bloodshed.

As there is every reason to believe that many of the murderers are at present living at Opotiki in a place that can be easily surrounded, the Government are of opinion that the landing should be effected there, and that it will probably be found expedient that it should take place during the night, with the view of seizing the murderers without allowing them an opportunity of resistance. This however is a point that must be left to the decision of Captain Hope.

If you should be attacked either upon landing or afterwards, you will act according to the best of your judgment, but no opportunity should in that case be lost of inflicting summary and effectual punishment upon the attacking force.

Should you succeed in landing and establishing yourself without opposition, you will at once summon the tribe to surrender the murderers within a given time. If they do this you will abstain from all active operations and wait further orders from me.

Upon landing at Opotiki, or as soon after as possible, you will communicate with the Chiefs of the loyal Arawa Tribe, with a view of arranging if necessary a combined plan of action for the apprehension of the murderers...

You will be careful to send me a full report of your proceedings by every opportunity.<sup>223</sup>

The same day, and just three days after declaring martial law in Ōpōtiki and Whakatāne, Governor Grey sent Brassey instructions that to 'inflict immediate and signal punishment of the Natives concerned in the late barbarous murders and acts of cannibalism on the East Coast' all those arrested by Brassey should be 'tried forthwith' by court-martial.<sup>224</sup> If found guilty of murder, and Brassey held 'no reason to doubt the justice of the sentence', he was to 'confirm and carry it into execution' with no need to consult Grey.<sup>225</sup>

---

<sup>223</sup> Defence Minister Atkinson to Major Brassey, 4 September 1865, AAYS 8643 AD6 7 / 1865 – 1866, ANZ, Wellington

<sup>224</sup> Governor Grey to Major Brassey, 4 September 1865, AAYS 8643 AD6 7 / 1865 – 1866, ANZ, Wellington

<sup>225</sup> Governor Grey to Major Brassey, 4 September 1865, AAYS 8643 AD6 7 / 1865 – 1866, ANZ, Wellington



### 3.3.5 The landing and offensive campaign of colonial troops

From 8 September 1865, a force of 516 colonial troops and officers arrived in the Ōpōtiki Harbour and began landing under the command of Major Brassey.<sup>226</sup> The force initially tasked with the arrest of Völkner's killers included: Companies 8 and 10 of the Taranaki Military Settlers; two companies of Whanganui and Patea Rangers; a troop of Whanganui Yeomanry Cavalry; one Company of the 1<sup>st</sup> Waikato Militia (under Major St John); and the Whanganui Native Contingent (under Major Kemp).<sup>227</sup> The landing and occupying troops faced an opposition of an estimated 200 local and Pai Mārire-affiliated Māori.<sup>228</sup> No definitive breakdown of how many Māori resisted the colonial forces at this time has been sighted during research for this report. Similarly, it is unclear how many of these Māori identified as Hauhau.

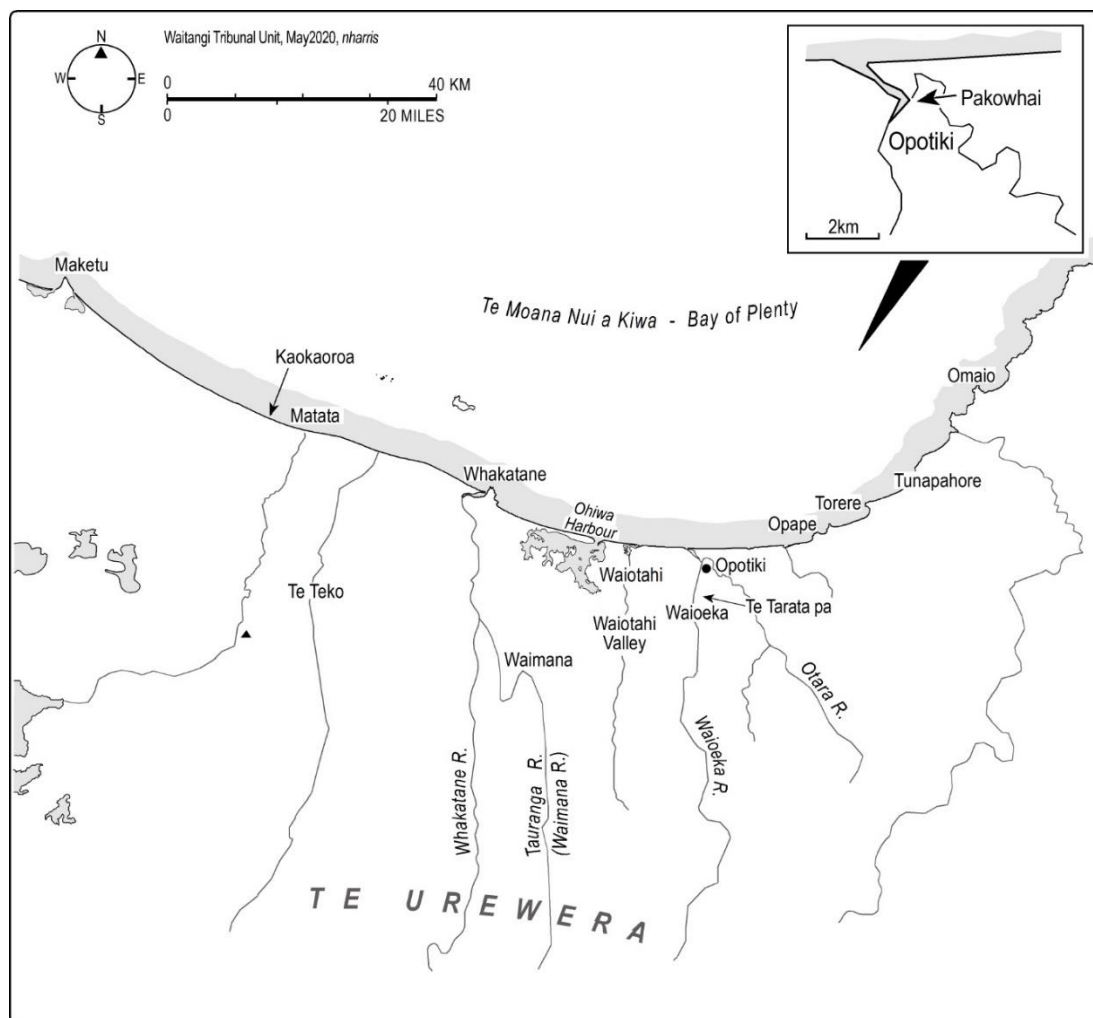


Figure 4: Some of the key areas during the hostilities of 1865 to 1866 in the north-eastern Bay of Plenty<sup>229</sup>

<sup>226</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 69

<sup>227</sup> Cowan, *The New Zealand Wars* vol 2, p 106

<sup>228</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 69

<sup>229</sup> O'Malley, *The New Zealand Wars*, p 170

The force arrived in a flotilla consisting of the steam corvette HMS *Brisk* and transport steamers *Stormbird*, *Ladybird*, and *Ahuriri*, as well as a smaller tender for landing troops. The *Brisk* was armed with artillery including a single 68-pounder solid-shot, and fifteen 32-pounder guns.<sup>230</sup>

As discussed above, there is no indication that the colonial forces made any attempt to communicate the need to turn over those suspected of killing Völkner. No negotiation was attempted, and the local Māori and Pai Mārire adherents were left to presume the reason for the colonial military presence. Despite this lack of an explanation for the advancing military force, there is evidence that the occupying party led with violence on their arrival in Ōpōtiki, with the indiscriminate bombardment of a village and shooting at local Māori.<sup>231</sup> The suggestion by Minister of Defence Atkinson that Whakatōhea be given an immediate opportunity to surrender the suspects was not heeded. Instead, troops were landed and a beachhead established.

On day one, despite problems crossing the sandbar, troops landed with little-to-no opposition from local Māori and Pai Mārire.<sup>232</sup> On day two, the local Māori and Pai Mārire adherents offered largely ineffective resistance but suffered a number of casualties whereas the colonial forces had no fatalities.<sup>233</sup> On day three, a Pai Mārire prophet Tio Kāhika (Ngāti Ngahere) was standing unarmed on the shore when he was shot dead from the water, despite having no known connection to Völkner's killing or offering any tangible threat to the colonial troops. Kahika became the first fatal casualty of the Ōpōtiki campaign. Lieutenant Stoaite, described Kahika's body as being used for target practice by those onboard the *Brisk* before it was commandeered specifically to aggravate those Māori onshore.<sup>234</sup> Once his body was on board Captain Levy recognised Kahika as 'one who was a leading leading Hau-hau of the crowd that sat around Volkner's body making faces at it'.<sup>235</sup> Presumably as part of the Pai Mārie rituals performed after Völkner's death. Throughout the day, the colonial forces persisted in indiscriminate bombing of the village with their 6-pounder gun.<sup>236</sup>

On day four, 11 September 1865, the landing of all troops was completed. The Patea Rangers pursued a group of Māori around the estuary to the village of Pākōwhai (now Ōpōtiki town), killing five

---

<sup>230</sup> Cowan, *The New Zealand Wars* vol 2, p 107

<sup>231</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 69

<sup>232</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 70-71

<sup>233</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 70-71; 'The Capture of Opotiki: By an Eye-Witness', *Nelson Examiner and New Zealand Chronicle*, 21 September 1865, p 3

<sup>234</sup> Some sources put the shooting of Kahika the following day 11 September 1865. 'Copy of Letter from Lieut. G.H. Stoaite R.N.: H.M.S. "Brisk", Napier, Saturday, Sept 20, 1865', *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113; Gilling, 'Te Raupatu O Te Whakatohea', p 71; Walker, *Ōpōtiki-Mai-Tawhiti*, p 97; 'The Capture of Opotiki: By an Eye-Witness', *Nelson Examiner and New Zealand Chronicle*, 21 September 1865, p 3

<sup>235</sup> 'The Capture of Opotiki: By an Eye-Witness', *Nelson Examiner and New Zealand Chronicle*, 21 September 1865, p 3

<sup>236</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 72

Māori.<sup>237</sup> The Native Contingent landed and along with some of the Rangers were involved in a shootout with 90 to 100 local Māori and Pai Mārire adherents. Despite reinforcements, and a brief stand at an old pā, the local Māori and Pai Mārire were driven back across the left branch of the Ōpōtiki River and into the bush.<sup>238</sup> The pā was seized and the Native Contingent razed surrounding whare before returning to the village, the Māori occupants of which had all fled, except one unarmed man who was shot in a house.<sup>239</sup>

Walker queries where the 800 people who had welcomed Kereopa to Ōpōtiki in March 1865 had gone, if only 90-or-so ‘fanatics’ remained to defend the settlements from colonial forces. Walker suggests the bombardment of Pākōwhai quickly led to the abandonment of the surrounding settlements and pā by various hapū for the hinterland of Toatoa and Whitikau. According to Walker, only portions of Ngāti Ira remained to hold the entrance to the Waioeka Gorge.<sup>240</sup>

Gilling reports that 12 or 13 Whakatōhea were killed over the four days of hostilities, with an unknown number wounded.<sup>241</sup> A newspaper article published one-week later states Major Macdonnell passed 13 bodies on a road following the attack of 13 September, this would amount to 14 Māori deaths with the inclusion of Kahika.<sup>242</sup> The colonial forces suffered no fatal losses, but four soldiers had been wounded when the steamer hit the bar.<sup>243</sup> However, Crosby suggests that 16 Whakatōhea were killed over the first 10 days of fighting, with two pā captured (in his account, Papakowhai and Kohipaua on the Otara River Flats).<sup>244</sup> Crosby deemed it likely Ngāti Rua were the principal occupants of these pā, as the other hapū are known to have moved inland to the more mountainous bush areas of Takaputahi, Toatoa, and Whitikau.<sup>245</sup>

Walker suggests Ngāti Ira were the most visible hapū in resisting the colonial forces, having ‘no option but to defend their territory’, and subsequently suffered the highest casualties before they withdrew in to the Waioeka Gorge.<sup>246</sup> According to Walker, others like Te Rānāpia had fled earlier during the

---

<sup>237</sup> Cowan, *The New Zealand Wars* vol 2, p 107; Gilling, ‘Te Raupatu O Te Whakatohea’, p 72

<sup>238</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 72

<sup>239</sup> Crosby, *Kūpapa*, p 270

<sup>240</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 98

<sup>241</sup> Gilling has prioritised the account of Lt GH Stoate who was aboard the HMS Brisk and documented events just 12 days later; ‘Copy of Letter from Lieut. G.H. Stoate R.N.: H.M.S. “Brisk”, Napier, Saturday, Sept 20, 1865’, *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113; Gilling, ‘Te Raupatu O Te Whakatohea’, p 72

<sup>242</sup> ‘The Capture of Opotiki: By an Eye-Witness’, *Nelson Examiner and New Zealand Chronicle*, 21 September 1865, p 3

<sup>243</sup> Gilling has prioritised the account of Lt GH Stoate who was aboard the HMS Brisk and documented events just 12 days later; ‘Copy of Letter from Lieut. G.H. Stoate R.N.: H.M.S. “Brisk”, Napier, Saturday, Sept 20, 1865’, *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113; Gilling, ‘Te Raupatu O Te Whakatohea’, p 72

<sup>244</sup> Presumably ‘Papakowhai’ is a pā near or a part of Pakowhai village

<sup>245</sup> Crosby, *Kūpapa*, p 270

<sup>246</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 103

initial landings. Te Ikiōterangi and those of Ngāi Tāmoko fled to Toatoa, as did those of Ngāti Rua under Te Awanui Aporotanga, while others moved on to Waipai.<sup>247</sup>

Once the local Māori population and Pai Mārire adherents had fled into the bush, the colonial forces began fortifying and establishing their base at Ōpōtiki. Over the weeks that followed, Völkner's church was commandeered and reinforced to form a redoubt. At night, local settlers sought protection from anticipated raids within.<sup>248</sup> From their base the colonial force essentially controlled the flats, which allowed them to pursue Pai Mārire adherents into the bush.<sup>249</sup>

On 4 October 1865, the colonial forces took and destroyed the abandoned pā of Paerata and Maraerohutu, both of which had been occupied by Mokomoko's people. The surrounding crops and livestock were also confiscated or destroyed.<sup>250</sup>

Also, on 4 October the Native Contingent, with support from other units, began making attacks on three pā – Te Tarata, Te Puia and Opekerau – which were occupied principally by Ngāti Ira under the command of Hira Te Popo. Cowan suggests there were also Ngāi Tama (of Tūhoe) 'and other Hauhau' present in these pā.<sup>251</sup> The pā were located near the meeting points of the Urewera and the plains of the Waioeka and Otara Rivers. The Te Tarata pā was attacked first and during the siege the occupants of Te Puia attempted to reinforce their comrades. The reinforcements were met by a cavalry charge, with colonial forces on horses pillaged earlier from Whakatōhea around Ōpōtiki.<sup>252</sup>

After it became clear to the occupants of Te Tarata that McDonnell would only accept an unconditional surrender, they decided to abandon the pā. Subsequently, during the night, the occupants of the pā attempted an escape, with 'quite large numbers' being shot down in the process.<sup>253</sup> Cowan suggests that 35 were killed during the attempt, with a similar number estimated to have been wounded.<sup>254</sup> Walker states that at least 40 Māori were wounded, and that the bodies of the Ngāti Ira killed were buried by colonial forces in a mass grave within the abandoned pā.<sup>255</sup> Included within these deaths

---

<sup>247</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 103

<sup>248</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 99

<sup>249</sup> Brassey to Colonial Defence Minister, 4 October 1865, AAYS 8638 AD1 26/aj CD1865/3219, ANZ, Wellington; Crosby, *Kūpapa*, p 270; Gilling, 'Te Raupatu O Te Whakatohea', p 77

<sup>250</sup> Brassey to Colonial Defence Minister, 4 October 1865, AAYS 8638 AD1 26/aj CD1865/3219, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 77

<sup>251</sup> Included in this number was Netana Whakaari (Ngāi Tama of Tūhoe), brother of Rakuraku. Cowan, *The New Zealand Wars* vol 2, pp 113-114

<sup>252</sup> The pillaging undertaken by Colonial forces in the north-eastern Bay of Plenty is discussed further below; Crosby, *Kūpapa*, p 270

<sup>253</sup> Crosby, *Kūpapa*, p 270

<sup>254</sup> Cowan, *The New Zealand Wars* vol 2, p 113

<sup>255</sup> Landholders later built a cowshed on the burial site, much to the chagrin of Ngāti Ira. Walker, *Ōpōtiki-Mai-Tawhiti*, p 101

were Pauro, Timoti, and Akuata, all identified by McDonnell as important Pai Mārire priests. Several other men who McDonnell believed had participated in Völkner's killing were also reported to have been killed, including Heremita Kahupaera (although his death must be incorrect as he was later tried and executed for the murder).<sup>256</sup> Meanwhile, the colonial forces suffered the loss of three men killed and nine wounded.<sup>257</sup>

On 6 October, an attack on Te Puia Pā was met without resistance and Ngāti Ira fled into the Waioeka Gorge.<sup>258</sup> Walker claims that after being defeated at Te Tarata, Whakatōhea realised resistance was futile and subsequently large groups began to surrender.<sup>259</sup> The surrender of Whakatōhea and Pai Mārire adherents is discussed further in the section below.

Later on 16 October, Major McDonnell sent Te Auripo (who had surrendered at Te Puia) to Kohipaua Pā (where Ngāti Ira had withdrawn to) to negotiate the group's surrender, which resulted in the surrender of 270 men, women and children from Ngāti Rua, Ngāti Ngahere, and Ngāi Tama.<sup>260</sup>

Following these events, the Native Contingent spent four or five weeks in search of Kereopa, one of the main suspects in Völkner's killing. The force was assisted by guides from Rakuraku (Tūhoe) who had only recently come in and surrendered and chased Kereopa through the Waimana Valley, Te Ihu O Te Atu, and Muriwaka to Koingo.<sup>261</sup> There were a number of skirmishes. During a skirmish at Koingo, four of Kereopa's seven followers were killed, but Kereopa escaped again.<sup>262</sup> Cowan suggests that the majority of Pai Mārire followers encountered by colonial forces during this time were from the Urewera and Ngāi Tama (Tūhoe), rather than from Whakatōhea.<sup>263</sup>

Donald McLean, as Government Agent for the East Coast and Superintendent of the Hawkes Bay Province, was in Ōpōtiki at the start of December 1865. Under his authority 50-100 Māori were sent to attack one of Patara's inland pā.<sup>264</sup>

---

<sup>256</sup> McDonnell to Brassey, 5 October 1865, in NZ Gazette, 18 November 1865, pp 344-345; Gilling, 'Te Raupatu O Te Whakatohea', p 78

<sup>257</sup> Cowan, *The New Zealand Wars* vol 2, p 113

<sup>258</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 102

<sup>259</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 103

<sup>260</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 86

<sup>261</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 82

<sup>262</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 83

<sup>263</sup> Cowan, *The New Zealand Wars* vol 2, p 113; Gilling, 'Te Raupatu O Te Whakatohea', p 83

<sup>264</sup> McLean to Colonial Defence Minister, 4 December 1865, AAYS 8638 AD1 29 / dt CD1865/4324, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 90

According to evidence given by Charles Jeffs, an officer in the 1<sup>st</sup> Waikato Regiment at the Ōpōtiki Compensation Court in March 1867, Rakuraku and his followers were not disarmed until 24 April 1866 at Waimana by an expedition under Colonel Lyon.<sup>265</sup>

### 3.3.6 Casualties

Walker notes that there were 58 casualties (presumably he is referring to deaths only) for Whakatōhea during the landing and occupation of colonial forces in the Ōpōtiki campaign.<sup>266</sup> These are broken down as follows: 1 killed at Huntress Creek; 6 killed in the sandhills opposite Pākōwhai; 5 killed at Otara Flat; 9 killed outside Te Puia Pā during the cavalry charge; 35 killed during the siege of and escape from Te Tarata Pā and 2 killed at Waiaua.<sup>267</sup>

Walker suggests the number of casualties for Whakatōhea during the invasion of more than 500 troops is lower than could be expected, which can be attributed to the majority of Whakatōhea taking an early refuge rather than offering resistance.<sup>268</sup>

The number of casualties was a significant percentage of the iwi's population. As discussed later in chapter 5, an 1866 census put the iwi's population at 531.<sup>269</sup> If the casualties of 1865 (58) were included in this 1866 figure (which would total 589) it could be deduced that Whakatōhea suffered a casualty rate of almost ten per cent (9.84%). The detrimental impact of these deaths on the iwi will have been exacerbated by the inclusion of many of the iwi's warriors, leaders, and future leaders in this number lost.

### 3.3.7 Surrendering

On 14 September 1865, Apanui Wepiha (Ngāti Awa, Ngāti Hokopū) with others sent a message to the colonial forces asking what treatment they could expect if they surrendered. The message suggested Wepiha and his associates were considering giving up Pai Mārire and pledging their allegiance to the Crown.<sup>270</sup>

On 17 September, the messenger returned with Major Brassey's terms of surrender. The terms were said to require all the murder suspects to be turned over for any chance for government mercy, and that if any others were proven to be involved later they would be arrested, 'dealt with', and their land

---

<sup>265</sup> C Jeff testimony, 7 March 1867, Minutes of the Opotiki Compensation Court in RDB, vol 120, p 46063

<sup>266</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp, 102 & 141-142

<sup>267</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 102

<sup>268</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 102

<sup>269</sup> Return of Whakatohea Tribe from J A Wilson's Census 1866 Showing Numbers of Surrendered and Unsurrendered Men, Women, and Children (typescript copy) in RDB, vol 123, p 47386

<sup>270</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 74

confiscated.<sup>271</sup> As mentioned above, Gilling indicates this is the first evidence of the colonial force communicating the terms of the Proclamation of Peace. Following the return of the messenger on 17 September, 100 men, principally of Ngāti Hokopū (Ngāti Awa), agreed to submit to the authority of the Crown.<sup>272</sup>

Four days later on 21 September, Major Brassey went to Tauranga to arrange the surrender of 'some 200 people', mostly from different Ngāti Awa hapū.<sup>273</sup>

Both Brassey and Stapp continued written negotiations with unspecified 'rebels' elsewhere from 25 September, for which they received only 'very impertinent' responses.<sup>274</sup>

By 2 October 1865, at least 57 'rebels' had surrendered at Ōpōtiki and taken the oath of allegiance, while a further 100 were still expected to come in. It is not clear exactly who these Māori were, although Stapp indicated that they were friends with Fulloon, so may have been more Ngāti Awa.<sup>275</sup> It is likely these unidentified 'rebels' were the same 60 men from 'Apanui' who Brassey describes as surrendering in a letter dated 4 October. Brassey's letter also suggested a further 120 were expected to come in to surrender from the east, while 100 from Te Kaha had yet to decide whether they would surrender.<sup>276</sup>

Attempts by Wiremu Kīngi of Ngāitai to negotiate a surrender of Whakatōhea for Stapp were initially unsuccessful. However, a second attempt supported by a number of Ngāitai was more successful, with the majority of those at Toatoa coming out from the bush to surrender.<sup>277</sup> It is not clear whether this is the same incident referred to by Crosby in which as many as 200 Ngāti Rua were said to have come from Waitai and surrendered en masse to Stapp.<sup>278</sup> But significant numbers of Whakatōhea and other Pai Mārire adherents came forward to surrender over this period, while a relatively small group remained in the bush.<sup>279</sup>

---

<sup>271</sup> Brassey to Colonial Defence Minister, 16 September 1865 in AAYS 8638 AD1 24/dy CD1865/2838, ANZ, Wellington

<sup>272</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 75

<sup>273</sup> Brassey to Colonial Defence Minister, 23 September 1865 in AAYS 8638 AD1 25 / bm CD1865/3035, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 76

<sup>274</sup> Stapp to Emma Stapp, 27 September 1865 in Gilling, 'Te Raupatu O Te Whakatohea', p 76

<sup>275</sup> Stapp to Emma Stapp, 2 October 1865 in Gilling, 'Te Raupatu O Te Whakatohea', pp 76-77

<sup>276</sup> Brassey to Colonial Defence Minister, 4 October 1865, AAYS 8638, AD1 26/aj, CD1865/3219, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 77

<sup>277</sup> Opotiki Native Land Court Minute Book, no 2, p 27 in Walker, *Ōpōtiki-Mai-Tawhiti*, p 82

<sup>278</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 103; Crosby, *Kūpapa*, p 270; Cowan, *The New Zealand Wars* vol 2, p 114

<sup>279</sup> Crosby, *Kūpapa*, p 270; Opotiki Native Land Court Minute Book, no 2, p 27 in Walker, *Ōpōtiki-Mai-Tawhiti*, p 82

Mokomoko surrendered with at least 20 followers of different sections of Ngāti Patu in October on the condition that his people would not suffer further punishment from the Crown.<sup>280</sup> Further, Mokomoko had offered their assistance to the Crown in subduing those who remained in 'rebellion'.<sup>281</sup> Despite this Ngāti Patu's lands were still confiscated in 1866 and this is discussed in the next chapter.

In mid-October, discussions between McDonnell and rangatira from the survivors of Te Tarata and Te Puia who had withdrawn to Kohipaua led to the surrender of the group. Subsequently, 50 men, women and children came forward to surrender on 18 October, then a further 100 men and 120 women and children the following day. The group consisted of Ngāti Rua, Ngāti Ngahere, and Ngāi Tama.<sup>282</sup> Kohipaua Pā was destroyed and the group was provided another area to rebuild a small pā, a collection of whare, and plant their crops.

In late October, sources including Rakuraku (Tūhoe) and Wepiha Apanui (Ngāti Awa), both of whom were likely attempting to buy favour in the hopes of preventing land confiscation, revealed that Kereopa and a small number of followers were camped in the lower Waimana Valley.<sup>283</sup> Rakuraku also provided the colonial forces with guides for the area. A subsequent firefight near Kereopa's camp on 23 October killed four Pai Mārire adherents, left Kereopa wounded and resulted in the surrender of a further seven men from Waimana.<sup>284</sup> For his assistance with supplies and the provision of guides, Rakuraku and the guides were each to be issued £10.<sup>285</sup>

By the end of October, there were only around 50 un-surrendered Whakatōhea adherents of Pai Mārire, plus women and children, who remained in 'rebellion'. These Ngāti Ira, under Hira Te Popo, Mio Te Whare Nui, Rawiri Makare and Himona had promised to surrender by this time, but on 30 October 1865 they had still not surrendered.<sup>286</sup> Similarly, 120 Ngāitai and Te Whānau-ā-Apanui had asked to take the oath, but awaited an opportunity.<sup>287</sup>

The Whanganui Native Contingent was withdrawn in mid-November 1865, but their departure was delayed until late November by poor weather.

---

<sup>280</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 103

<sup>281</sup> Stapp to Colonial Defence Minister, 30 October 1865, AAYS 8638 AD1 27 / dm CD1865/3695, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 84

<sup>282</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 86

<sup>283</sup> Crosby, *Kūpapa*, p 271

<sup>284</sup> Crosby, *Kūpapa*, p 271; Gilling, 'Te Raupatu O Te Whakatohea', p 83

<sup>285</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 83

<sup>286</sup> Stapp to Colonial Defence Minister, 30 October 1865, AAYS 8638 AD1 27 / dm CD1865/3695, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 84

<sup>287</sup> Stapp to Colonial Defence Minister, 30 October 1865, AAYS 8638 AD1 27 / dm CD1865/3695, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 84



In January 1866, further groups were still coming in to surrender with many suffering from the sustained deprivation of food following the destruction of crops and livestock.<sup>288</sup> One such group of 70 was described as consisting of ‘nothing but their skin that keeps them together’.<sup>289</sup>

Most of the Whakatōhea and Ngāitai who surrendered would have ended up at Ōpape or Tōrere.

### 3.3.8 Colonial forces short on supplies, pillaging and scorched earth

The colonial forces had only been supplied with limited rations due to the limited space in the transport vessels. The lack of provisions was based on a presumption that the force would be accommodated by the local populous of Ōpōtiki. The resident Māori population of Ōpōtiki, who were largely of Whakatōhea, were forced to abandon what they could not carry or hide when they fled, including crops, livestock, household items and farming equipment and treasures. Prior to the killing of Völkner, Whakatōhea, or at least some members of the iwi, had been described as a wealthy group who had prospered through farming and providing the settler markets of the coast and Auckland. Much of the proceeds of this economy would have been lost to the iwi during the occupation of colonial troops.<sup>290</sup>

The officers and troops enjoyed the ‘fat of the land’ during their occupation of Ōpōtiki. Stoate described eating 6 meals per day over the six days the *Brisk* remained in the Ōpōtiki Harbour:

...pork chops beef steaks fowls and everything good. In the village we found potatoes enough to feed an army – pigs and cattle were swarming around. I remained on shore for five days after the village was taken, during which time I had glorious fun.<sup>291</sup>

Stoate also procured for himself objects that would likely have been considered taonga by their owners:

some very fine specimens of Maori trappings one figurehead to a Maori war canoe tomahawk spear paddle and some greenstone. I could have got any amount of Maori Books but did not think it worth while.<sup>292</sup>

---

<sup>288</sup> Isaac Smith to Susan Smith, 8 January 1866, Smith Family Correspondence, MS-Papers-0388, ATL, Wellington; Gilling, ‘Te Raupatu O Te Whakatohea’, p 90

<sup>289</sup> Isaac Smith to Susan Smith, 8 January 1866, Smith Family Correspondence, MS-Papers-0388, ATL, Wellington; Gilling, ‘Te Raupatu O Te Whakatohea’, p 90

<sup>290</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 74

<sup>291</sup> ‘Copy of Letter from Lieut. G.H. Stoate R.N.: H.M.S. “Brisk”, Napier, Saturday, Sept 20, 1865’, *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113

<sup>292</sup> ‘Copy of Letter from Lieut. G.H. Stoate R.N.: H.M.S. “Brisk”, Napier, Saturday, Sept 20, 1865’, *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113

Following the abandonment of both Paerata Pā and Maraerohutu Pā by Mokomoko and his men, Brassey reported the destruction and looting of potatoes, kumara, wheat and meat, as keeping Stapp's force fed 'at the expense of the enemy'.<sup>293</sup>

Cowan described the colonial force's time in Ōpōtiki as follows:

...skirmishing occasionally, and revelling in the abundance of food in the captured settlements. The Whakatohea people were celebrated for their skill in wood-carving, and the alluvial plain of Opotiki was covered with well-built villages containing many beautifully decorated houses. The valley was rich in food crops and in groves of peach-trees. The force was plentifully rationed out of the abundance of meat and poultry, and the kumara and potatoes and other vegetables which the fields and gardens of the Whakatane produced. The Wanganui Yeomanry Cavalry were mounted on looted Maori horses, and had the satisfaction presently, of engaging in a cavalry charge on the open plain.<sup>294</sup>

Colonial officials explicitly consented to the taking of horses. The colonial force had not been provided with horses and were expected to source them once in Ōpōtiki. Horses that were secured were to be considered confiscated and later given Government brands as per Defence Minister Haultain's instructions.<sup>295</sup> A letter, possibly from Private Isaac Smith of the Rangers, suggests as many as 130 horses had been taken by early November.<sup>296</sup>

Samuel Austin, a Pākehā NCO with the Whanganui Native Contingent, frequently noted in his diary of participating with his contingent in the pillaging and destruction of the goods, produce, and livestock left behind by Whakatōhea.<sup>297</sup>

Major Stapp, while remarking on Whakatōhea's apparent wealth, prided himself in what he had taken from them in letters to his wife, Emma:

... all their ploughing was done with horses a bullock was never seen working here. I should say they were very rich . . . Ploughs brand new all sorts of implements. I have a wash stand, iron bedstead, table, chair and so have lots of others . . . And [the force] have got thousands worth of property belonging to them [ie Whakatohea].<sup>298</sup>

---

<sup>293</sup> Stapp quoted in Gilling, 'Te Raupatu O Te Whakatohea', p 77

<sup>294</sup> Cowan, *The New Zealand Wars* vol 2, p 109

<sup>295</sup> Stapp to Colonial Defence Minister, 30 October 1865, AAYS 8638 AD1 27 / dj CD1865/3690, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 82

<sup>296</sup> Isaac Smith to Susan Smith, 3 October 1865, Smith Family Correspondence, MS-Papers-0388, ATL, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 77

<sup>297</sup> Crosby, *Kūpapa*, p 271; Barbara Mabbett, *For Gallant Service Rendered: The Life & Times of Samuel Austin, NZ Cross, 1831-1903* (Wellington: Steele Roberts, 2012)

<sup>298</sup> Stapp to Emma Stapp, 12 September 1865 in Gilling, 'Te Raupatu O Te Whakatohea', p 15 Walker, *Ōpōtiki-Mai-Tawhiti*, pp 99-100

We have lots of furniture (a bath tub and straw bed) . . . We have secured over twenty horses. I have a well-bred mare she is about ten years old. What a beautiful place this is.<sup>299</sup>

During or following later attacks on pā, including that of Te Tarata and Te Puia, any surrounding crops and livestock were either taken or destroyed by colonial troops. Stapp referred to the troops actions positively as an additional ‘tremendous blow’ to Whakatōhea and the Pai Mārire adherents.<sup>300</sup>

Following the surrender of those at Kohipaua Pā around 18 October 1865, Stapp reported that the group surrendered because ‘they admit they are beaten in several ways vis In the Field, and by taking nearly all their food, and also all their available land is gone’.<sup>301</sup> This shows that the scorched earth tactic had indeed helped subdue the ‘rebels’.

A wealth of evidence, including the correspondence above, indicates that some military personnel perceived their posting in the north-eastern Bay of Plenty as an opportunity for personal enrichment and had little regard for the property of Whakatōhea. Clearly, the pillaging of crops and livestock was over and above what was necessary to sustain the colonial forces and whether by policy or just practice, was a means of retribution and punishment against Whakatōhea and a means of profiteering for colonial troops.

It was not only the individuals of the colonial forces who benefitted from the confiscation of Māori-owned livestock in the north-eastern Bay of Plenty. The taking of stock and horses, which continued for well over a year, also directly benefitted the colonial Government. In November 1866, authorisation was given for wild cattle (presumably once the domestic stock of Māori) and any horse or other property confiscated from ‘rebels’ to be auctioned with the proceeds going to the paymaster and credited to the Colonial Treasurer.<sup>302</sup> However, some form of arrangement must have been in practice prior to this as government auctions of cattle, horses and other confiscated goods had occurred as early as July.<sup>303</sup> One such auction had included the complete machinery of a flour mill, presumably confiscated from Hira Te Popo’s (Ngāti Ira) flour mill prior to its destruction by colonial forces.<sup>304</sup>

---

<sup>299</sup> Stapp to Emma Stapp, 16 September 1865 in Gilling, ‘Te Raupatu O Te Whakatohea’, p 15; Walker, *Ōpōtiki-Mai-Tawhiti*, pp 99-100

<sup>300</sup> Stapp to Emma Stapp, 6 October 1865 in Gilling, ‘Te Raupatu O Te Whakatohea’, p 80

<sup>301</sup> Stapp to Colonial Defence Minister, 21 October 1865, AAYS 8638 AD1 27 / da CD1865/3676, ANZ, Wellington; Gilling, ‘Te Raupatu O Te Whakatohea’, p 86

<sup>302</sup> Holt to St John, 1 November 1866, AAYS 8643 AD6 8, ANZ, Wellington; Gilling, ‘Te Raupatu O Te Whakatohea’, p 82

<sup>303</sup> ‘Opotiki’, *Daily Southern Cross*, 6 August 1866, p 4

<sup>304</sup> ‘Opotiki’, *Daily Southern Cross*, 6 August 1866, p 4; Walker, *Ōpōtiki-Mai-Tawhiti*, p 67

Despite the pillaging being undertaken against innocent Māori as well as those considered guilty, the government protected its troops by passing the Indemnity Act 1866. Under the Act, officials and military personnel could not be pursued for damages or losses by their civilian victims.

### 3.3.9 Ongoing hostilities

Following the capitulation of most of Whakatōhea, the colonial forces in Ōpōtiki were reduced. The smaller number of troops under Lt-Col Lyon included members of the Patea and Whanganui Rangers, with further support from the Ngāti Hau Native Contingent. This reduced force was involved in intermittent skirmishes with Pai Mārire adherents in the surrounding Waioeka and Waimana Gorge areas over the proceeding two years.

Some ‘desultory skirmishing’ continued around the Ōpōtiki hinterland throughout 1866 and 1867, including into the Waioeka and Waimana Valleys.<sup>305</sup> The Patea Rangers, who were heavily involved in the scouting and fighting, were based at Ōpōtiki for nine months. They did not leave Ōpōtiki until May 1866 when military forces based at Ōpōtiki and Maketū were wound down.<sup>306</sup>

Some Ngāti Ira under Hira Te Popo and Ngāi Tama (Tūhoe) under Tamaikowhā continued their resistance over this time. During one of these skirmishes in the Ōtara Gorge, two Whakatōhea adherents of Pai Mārire were killed while others were taken prisoner.<sup>307</sup>

The Pai Mārire adherents that remained in the bush made sporadic guerrilla style attacks on outlying settlers and ambushing travellers. These included the killings of both Wi Popata and Bennett White at Waiotahe by Tamaikowhā (Ngāi Tama, Tūhoe). The killings of Popata and White would cast a shadow over the sitting of the Compensation Court in 1867, and is discussed in later chapters of this report.<sup>308</sup>

Walker’s interpretation is that the Government did not ‘wage all-out-war’ against the remaining Pai Mārire in the years that followed, as they hoped any ill-feeling between local Māori and the new Pākehā in the area would subside and allow the Pākehā settlements to thrive. Instead, defensive measures were established to protect the settlements, including blockhouses at the entrances to both the Waioeka and Otara Gorges. The Waioeka blockhouse was located just 100 yards from the Opekerau kainga of Hira Te Popo’s Ngāti Ira.<sup>309</sup> With only a small number of troops remaining, the blockhouses were not well-manned and sometimes remained empty.<sup>310</sup>

---

<sup>305</sup> Cowan, *The New Zealand Wars* vol 2, p 116

<sup>306</sup> Cowan, *The New Zealand Wars* vol 2, p 109

<sup>307</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 104; Cowan, *The New Zealand Wars* vol 2, p 174

<sup>308</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 106

<sup>309</sup> Cowan, *The New Zealand Wars* vol 2, p 114

<sup>310</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 106

However, the military settlers were not content to see these attacks by Pai Mārire adherents go unreciprocated, so established their own volunteer force – the Opotiki Volunteer Rangers – under the Militia Act 1858.<sup>311</sup> The volunteers could pursue Tamaikowhā despite the colonial forces defensive orders and could protect the town as the number of Government forces were reduced. The Rangers were involved in most of the action over next few years, including a significant attack on a Ngāi Tama (Tūhoe) settlement near Waimana, which was successfully repulsed by Tamaikowhā.<sup>312</sup>

In January 1867, J A Wilson reported that 5 unsundered Whakatōhea, said to be from Maungapohatu, visited the surrendered settlements of Whakatōhea at Ōpape. The emissaries were delivering a message that ‘the day of their new god was at hand’, that Whakatōhea should ‘hold themselves in readiness’ and that ‘Tikanga Kohuru’ was not allowed. However, the emissaries’ letters were all handed over to Major St John, and Wilson believed these messages had made no impression on those at Ōpape.<sup>313</sup>

Throughout 1867, Wilson’s surveying and his negotiations for land compensation and later the sittings of the Compensation Court themselves, were all interrupted by continuing hostilities or at least the threat of hostilities around Ōpōtiki and the rest of the north-eastern Bay of Plenty.<sup>314</sup> The ongoing hostilities are detailed in Gilling’s report.<sup>315</sup>

Further raids by Pai Mārire adherents on local Māori in January 1868 at Ōhiwa and Waiotaha led to the colonial forces being reinforced, with as many as 393 men made available on the ground. Separately, another volunteer force numbering 90 was raised under St John, which was involved in a number of indeterminate skirmishes in the area of Waimana and Whakatāne River with light casualties on both sides.<sup>316</sup>

The following year, when St John again raised a need for reinforcements, a division of constabulary under Major Fraser was sent out to Ōpōtiki, and an auxiliary force of 100 Te Arawa was raised. After Pai Mārire adherents killed two of Rakuraku’s people in Ōhiwa, the killers were pursued by a combined force through Waimana and up the Whakatāne River, culminating in a skirmish at Te Ponga. However, the Te Arawa auxiliary would go no further into the Urewera to pursue the Pai Mārire adherents, so they were returned to Ōpōtiki where they were disbanded.<sup>317</sup>

---

<sup>311</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 92

<sup>312</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 106; Gilling, ‘Te Raupatu O Te Whakatohea’, pp 92-93

<sup>313</sup> It is not clear how ‘Tikanga Kohuru’ was understood at the time. J A Wilson, ‘Extract of Letter written by Mr J A Wilson, dated Whakatane 10th January 1867’, 10 January 1867, AJHR, 1867 A-20, p 45

<sup>314</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, p 93-97

<sup>315</sup> Gilling, ‘Te Raupatu O Te Whakatohea’, pp 93-101

<sup>316</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 107

<sup>317</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 107

In an attempt to secure ongoing control over the Ōhiwa district, another auxiliary force of 60 Te Arawa was raised to protect Ōhiwa. The Government offered 25 acres of land to each man from the surplus land confiscated around Ōhiwa, in exchange for 16 months of service.<sup>318</sup> From this point, Pai Mārire raids dampened down across the wider district and with the military settlers taking up their land, the Pākehā township of Ōpōtiki began to burgeon upon the site of Pākowhai village from which the original Māori inhabitants had largely been marginalised.<sup>319</sup>

Some Whakatōhea would later serve alongside the colonial forces in pursuit of Te Kooti, while others like Hira Te Popo and his followers would remain in rebellion.<sup>320</sup>

Te Kooti made some approaches for support to Hira Te Popo, but also undertook raids in the Ōpōtiki region.<sup>321</sup>

On 7 March 1870, Te Kooti raided the Ōpape area (which was the reserve for surrendered Whakatōhea) and compelled 250 Whakatōhea and Ngāitai to join him.<sup>322</sup>

Later that year on 8 May 1870, followers of Hira Te Popo surrendered, while Te Popo remained at large with 15 others.<sup>323</sup>

On 17 June 1870, Hira Te Popo and 34 followers finally surrendered to Major William Mair at Ōpōtiki.<sup>324</sup> Although he had taken no part in active operations against colonial forces, Hira Te Popo was considered at the time to be one of the greatest supporters of the Kīngitanga within the north-eastern Bay of Plenty.<sup>325</sup>

While ‘scores’ more Whakatōhea were killed over the following five years of smaller skirmishes for and against Te Kooti. Walker indicates that Ngāti Patu, as Catholics, were the only Whakatōhea hapū without any Ringatū converts and combatants aligned with Te Kooti.<sup>326</sup>

### 3.3.10 Court-martial of alleged killers of Völkner and Fulloon

Völkner’s killing, as outlined in part one of this chapter, was a civil offence committed or at least assisted by a small number of people. However, Walker suggests that due to the ‘Hauhau insurgency’,

---

<sup>318</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 107

<sup>319</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 108

<sup>320</sup> Crosby, *Kūpapa*, pp 370-371, 413, 421, 424-425, & 430-431

<sup>321</sup> Crosby, *Kūpapa*, pp 367, 410-413

<sup>322</sup> Crosby, *Kūpapa*, p 459

<sup>323</sup> Crosby, *Kūpapa*, p 424

<sup>324</sup> Crosby, *Kūpapa*, p 430

<sup>325</sup> Crosby, *Kūpapa*, p 430

<sup>326</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 141-142

Völkner's killing was treated as an act of war.<sup>327</sup> A large number of men eventually surrendered or were captured and tried for the killings of Völkner and Fulloon. As each man surrendered they were processed according to their suspected guilt. Those not suspected of Völkner's murder by colonial forces were released, while others were detained for trial.

### 3.3.11 Outlying Districts Police Act 1865

On 9 October 1865, the Outlying Districts Police Act 1865 was passed. Section 2 of the Act allowed the Governor to call upon local Māori and other inhabitants to assist with the arrest of anyone suspected of murder, attempted murder, rape, burglary, arson, or armed resistance within the district. Further, sections 3 and 4 of the Act stipulated that if the suspects were not arrested within the given timeframe, the districts in which the crimes were committed and any in which the suspect was 'concealed harboured or protested', could be defined by the Governor and the lands within confiscated by the Crown. The Outlying Districts Police Act 1865 would have allowed the confiscation of land in the Bay of Plenty, but it does not appear to have been implemented in the district. Instead, the land was later taken under the New Zealand Settlements Act 1863 and its amendments, and this is discussed in subsequent chapters.

### 3.3.12 The court-martial and questions of jurisdiction

In early September, Governor Grey had told Brassey that if following a court-martial, he held 'no reason to doubt the justice of the sentence' that he should ensure an execution was taken promptly without further need for confirmation from Grey.<sup>328</sup> Despite this, on 20 October, Grey updated orders to the commanding officer in Ōpōtiki reversing, telling Brassey:

Before carrying into effect the sentence passed by a Court Martial on any Native convicted of murder, you will await my decision, reporting fully on the case, and forwarding the whole of the evidence for my information.<sup>329</sup>

In practice, the Court could order an execution, but this could no longer be carried out without explicit instruction from Grey.

---

<sup>327</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 92

<sup>328</sup> Grey to Brassey, 4 September 1865, AAYS 8643 AD6 7 / , ANZ, Wellington

<sup>329</sup> Grey to Officer Commanding Opotiki, 20 October 1865, AAYS 8643 AD6 7 / , ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 88

The details of the court-martials (discussed below) that did proceed are not clear. There is very little extant evidence and much of what is known to exist is from contemporary newspapers and offers only a partial and often contradictory narrative.

What is known is that in mid-October 1865, after numerous Ngāti Awa communities had been attacked and destroyed, Crown forces captured a significant number of Ngāti Awa.<sup>330</sup> Those considered guilty for Fulloon's death, and those thought to be accessories before the fact, were transported to Ōpōtiki to be tried by court-martial. The prisoners were those Ngāti Awa rangatira and warriors who had surrendered at Te Teko.<sup>331</sup> By this time there were also four Māori held in custody for the murder of Völkner. These included Mokomoko (Ngāti Patu, Whakatōhea, Ūpokorehe), Heremita Kahūpaea (Ūpokorehe), Hakaraia Te Rāhui (Ngāti Ira, Whakatōhea) and Paora Tai.<sup>332</sup> The only other suspect in Völkner's death that remained at large at this time was Kereopa Te Rau.<sup>333</sup>

The first general court-martial was established on 6 November 1866 by Stapp. The Court was presided over by Major George with seven other commissioned officers, including Lieutenant Chapman as Judge Advocate. Major McDonnell acted as the Prosecutor, with Civil Commissioner Thomas Smith acting for defence, and Major Mair as interpreter.<sup>334</sup> Given that both Smith and Mair had previously undertaken roles in the pursuit, arrest, and obtaining of evidence against the defendants, questions may be raised about their ability to conduct a fair trial for the defendants.

What is known is that the first court-martial tried 35 prisoners transported to Ōpōtiki from Whakatāne for the murder of Fulloon and members of his crew.<sup>335</sup> Twenty-one men stood trial for the wilful murder of Fulloon and the crew of the *Kate* between 6 to 15 November 1866. The result being 16 of the accused were found guilty and sentenced to death. From 17 November to 27 November 1866, 14 men were tried for being accessories before the fact.

---

<sup>330</sup> Holt to Stapp, 21 October 1865 & 1 November 1865, AAYS 8643 AD6 7 /, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 83

<sup>331</sup> This included persons associated with Ngāi Te Rangihouhiri, Te Whānau a Taiwhakaea, Te Patutatahi, Ngāpuhi, Ngāti Hokopū, Patuwai, and Ngāti Pūkeko; 'The Trials', vol.1, report prepared for Waitangi Tribunal, 1994, Wai 46, C10, pp 4-5; Jane Luiten, 'Historical Research Report for Te Runanga O Tuwharetoa Ki Kawerau', Wai 46/62, I5, 1995, pp 44-52; Binney, *Encircled Lands*, p 92

<sup>332</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 88; Walker, *Ōpōtiki-Mai-Tawhiti*, p 109; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 42. It is unclear when Penetitia Hawea (Ngāti Awa) is captured but he was included in those on trial at the Supreme Court. In the Ngāti Awa claim Heremita Kaupaea was listed as Patuheuheu hapū (Ngāti Awa) not Whakatōhea or Ūpokorehe.

<sup>333</sup> Waitangi Tribunal, *Te Urewera*, vol 1 (Wellington: Legislation Direct, 2009), p 185

<sup>334</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 71; 'The Trials', Wai 46, C10, vol 1, 1994, p 13; Gilling suggests Commissioner Clarke acted as Counsel for the prisoners, and Commissioner Smith as Interpreter, Gilling, 'Te Raupatu O Te Whakatohea', p 88

<sup>335</sup> Gilling has the number at 32, 20 for the murder, 12 for accessory to the fact



The courts-martial took all month. Once the verdicts were handed down it was up to Governor Grey whether to impose an execution or not. To aid his decision, Grey was sent the judge's notes from the case. It is thought that the official court records and related documentation was lost when records of the criminal court were ordered to be destroyed in 1949.<sup>336</sup>

Before Grey could impose his decision the Attorney General, James Prendergast, having likely taken advice from the British Government, ruled that the court-martial process was illegitimate in New Zealand. Prendergast released his decision on 23 December 1865, stating that 'Martial Law has no place in the institutions of this country and is in no way recognised by the law'.<sup>337</sup> Therefore, the courts-martial were not valid. There was no barrier to the prisoners being tried in a Supreme Court and no risk of a double jeopardy ruling being upheld. In his report, Gilling discusses in detail the arguments for and against and the context of a court-martial for prisoners not of an official armed force.<sup>338</sup>

The previous year on 26 September 1865, the Native Rights Act 1865 had passed. The Act deemed all New Zealand-born Māori 'natural-born subject[s] of Her Majesty to all intents and purposes whatsoever'. In effect this Act provided jurisdiction for the Supreme Court and 'all other Courts of law within the Colony' over Māori and their property.<sup>339</sup>

In February 1866, Premier Edward Stafford recommended the prisoners suspected of the killing of Völkner and Fulloon and his crew should be tried in the ordinary courts, and they were transported to Auckland for this purpose.<sup>340</sup>

### 3.3.13 Supreme Court

Commissioner Clarke was instructed to bring a case to the Resident Magistrate to establish a *prima facie* case against the prisoners and a Grand Jury established this on 12 March 1866.<sup>341</sup> The prisoners suspected of Völkner's death now included Mokomoko (Ngāti Patu, Ūpokorehe), Heremita Kahūpaea

---

<sup>336</sup> 'The Trials', vol.1, report prepared by Ngāti Awa for Waitangi Tribunal, 1994, Wai 46, C10, p 29

<sup>337</sup> Prendergast, memo for Colonial Secretary, 23 December 1865, ACGS 16221 J22 2 / 3A, ANZ, Wellington; Binney, *Encircled Lands*, p 93;

<sup>338</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 49-51

<sup>339</sup> Native Rights Act 1865, section 3

<sup>340</sup> E W Stafford, 'Memorandum by Mr Stafford', 30 December 1865, AJHR, 1866, A-1, p 85; Walker, *Ōpōtiki-Mai-Tawhiti*, p 104

<sup>341</sup> Arney to Colonial Secretary, 17 March 1866, ACGS 16221 J22 2 / 3A, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 51

(Ūpokorehe), Hakaraia Te Rāhui (Ngāti Ira), and Paora Tai (Whakatōhea), but also Penetito Hawea (Ngāti Awa).<sup>342</sup> The prisoners were all tried together rather than individually.<sup>343</sup>

Evidence was provided by several witnesses for the Crown, including the Resident Magistrate of Tauranga, Reverend Grace, Joseph Jeans, Wepiha Te Pōno (Ngāti Awa), Wiremu Te Paki (Whakatōhea), and Patoromu Taiwawe. Much of the testimony from these witnesses only partially details events, and/or contradicts itself or that of other witnesses. No defence was provided, and although Carnell was able to cross-examine witnesses, no witnesses were brought for the defence. Gilling provides a detailed analysis of the evidence presented.<sup>344</sup> The witnesses' evidence resulted in the jury finding four of the five prisoners guilty of Völkner's murder, only Paora escaped a guilty verdict.

Before sentencing, the defence was able to present character witnesses. These witnesses included Tiwai (Whakatōhea), Patoromu Taiwawe (Ngāti Pikiāo), and Reverend Grace, but according to Gilling the testimony recorded does not indicate any evidence that would likely have been useful in reducing a sentence.<sup>345</sup>

The prisoners were then able to make statements on their own behalf. But their testimony appears to have been in vain as the judge passed death sentences to each prisoner, except Paora, who was discharged.<sup>346</sup>

An attempt by the prisoners' counsel, Carnell, to have the case retried by the Court of Appeal on the basis of a technical error was withdrawn the same day after Chief Justice Arney stated he could see no grounds for an appeal.<sup>347</sup>

In March 1866, the Ngāti Awa men were tried for the murder of Völkner in the Supreme Court at Auckland. Twenty-five of the 33 Ngāti Awa prisoners who were tried were sentenced to death, from whom five were executed. Of the remainder, four died in prison and four were pardoned while the rest served sentences of imprisonment of between one year and life.<sup>348</sup>

---

<sup>342</sup> Different names have been cited elsewhere for Paora including Paora Taia and Paora Tenaoterangi

<sup>343</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 52; Gilling, 'Te Raupatu O Te Whakatohea', p 88; Walker, *Ōpōtiki-Mai-Tawhiti*, p 109; Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 42. In the Ngāti Awa claim Heremita Kaupaea was listed as Patuheuheu hapū (Ngāti Awa), not Whakatōhea or Ūpokorehe.

<sup>344</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 52-56

<sup>345</sup> Gilling, 'Te Raupatu O Te Whakatohea', pp 56-57

<sup>346</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 58

<sup>347</sup> Arney to Colonial Secretary, 13 April 1866, ACGS 16221 J22 2 / 3A, ANZ, Wellington; Gilling, 'Te Raupatu O Te Whakatohea', p 61

<sup>348</sup> 'The Trials', vol.1, report prepared by Ngāti Awa for Waitangi Tribunal, 1994, Wai 46, C10, pp 4-5 & 49-55

In April 1866, George Graham wrote to the Colonial Secretary arguing that all but Heremita Kahupaea and Hakaraia Te Rahui were innocent and that their lives should be spared, and instead implicated Wepiha in the killing.<sup>349</sup>

Despite this, on 17 May 1866, Mokomoko, Heremita Kahupaea, and Hakaraia Te Rahui were hanged at Mount Eden Gaol in accordance with the Execution of Criminals Act 1858.<sup>350</sup> The death sentence of Penetito was commuted to penal servitude of one year on 7 May 1866, resulting in his release into the custody of George Graham on 15 October 1866.<sup>351</sup>

It is important to note that Mokomoko would be found guilty and executed for participating in Völkner's execution. Mokomoko maintained his innocence throughout his trial and execution and after much petitioning by his descendents he was given a free pardon in 1992. This pardon was given statutory recognition in 2013 restoring the 'character, mana, and reputation of Mokomoko and his uri'.<sup>352</sup>

#### 3.3.14 Chapter summary

The religious Pai Mārire (Hauhau) movement was established by Te Ūa Haumene in Taranaki during the early 1860s. The burgeoning group was involved in some of the hostilities with the colonial forces in Taranaki during this early 1860s period. In early 1865, emissaries of Pai Mārire arrived in the north-eastern Bay of Plenty as part of an attempt to unify Māori. The emissaries, Kereopa Te Rau (Ngāti Rangiwewehi, Te Arawa) and Patara Te Raukauri (Taranaki) were accompanied by a group of about 40 Māori adherents and 150 Ngāti Awa under Wepiha Te Pono. Their arrival in Ōpōtiki would spark a chain of events which would dramatically change the fortunes of Whakatōhea, Ūpokorehe, and other iwi of the north-eastern Bay of Plenty.

By 1865, Ōpōtiki was home to a sizeable Māori Christian population under the Anglican (CMS) Reverend Carly Sylvius Völkner and the Roman Catholic Father Garavel. However, Völkner, who was returning from Auckland when Pai Mārire arrived, had been losing popularity amongst Māori of Ōpōtiki for a number of reasons since the outbreak of war in the Waikato. In particular, he was losing popularity because of his role as informant to the colonial Government on the movements and politics of local Māori. The arrival of the Pai Mārire emissaries further hardened the locals' views against Völkner.

---

<sup>349</sup> George Graham to Colonial Secretary, April 1866, ACGS 16221 J22 2 / 3A, ANZ, Wellington

<sup>350</sup> NZ Gazette, 30 May 1866, p 229

<sup>351</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 61; E W Stafford, 'Memorandum by Mr Stafford', 25 February 1868, AJHR, 1868, A-1, p 44

<sup>352</sup> Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013

When Völkner returned to Ōpōtiki on 1 March 1865, he, alongside Reverend Grace and the sailors of their ship, were taken prisoner. Discussions regarding what should happen to the prisoners included Whakatōhea as well as the visiting Pai Mārire and Ngāti Awa. The majority of Māori at the discussion voted in favour of hanging Völkner. Of those present, only two Whakatōhea rangatira, Te Piahana Tiwai and Te Ranapia, are said to have voted against the motion. It was also agreed that Grace would be kept as a prisoner. On the afternoon of 2 March 1865, Völkner was tried and hanged by a large party of about 30 and his body decapitated.

Although it is generally agreed that the execution took place under the initiative of Kereopa, there are varied and conflicting accounts as to what else happened, who else was involved in the execution and what roles they played. It is clear that although individuals from Whakatōhea supported and were involved in the actions that day – the overarching majority of Whakatōhea did not support these actions and were not involved in the execution. The Whakatōhea hapū of Ngāti Ngahere and Ngāti Ira disapproved of the killing entirely, as did substantial sections of Ngāti Rua. Sections of Ngāti Patu from Paerata and Ūpokorehe from Ōhiwa were also never involved with Pai Mārire. However, at least sections of Ngāi Tama supported the execution of Völkner. Despite the active involvement of just a small number of individuals of Whakatōhea in Völkner's death, and the acknowledged support for his execution by just one hapū, the colonial Government's military response, which began six months later, targeted all of Whakatōhea.

The first response from the Government in May 1865 involved information gathering by Fulloon (Ngāti Awa, Tūhoe) and Tiwai (Whakatōhea) across the north-eastern Bay of Plenty for the whereabouts of Kereopa, the principal suspect for the murder. A second expedition, run by Fulloon, who was freshly promoted to captain in the militia, arrived off the coast of Whakatāne on 22 July 1865. The arrival of the ship breached an aukati established to protect the Ngāti Awa people. The ship was boarded, and a series of exchanges and insults between the boarding party of local Ngāti Awa, Te Whānau-ā-Apanui and Pai Mārire adherents and Fulloon cemented the offence of the ship's presence in the harbour. Subsequently, a group of 20 from this group (which likely included members of Ngāti Awa and Te Whānau-ā-Apanui) reboarded the ship at night under the orders of Pai Mārire and Ngāti Awa leadership and killed Fulloon and three members of the crew. The killing was considered by Ngāti Awa to be a just 'sentence' under Māori custom for the crew's missteps in breaching the aukati and the offence caused by Fulloon's actions, including whakapohane.

The killing of Fulloon and his crew as servants of the Crown in addition to the killing of Völkner as a missionary outraged Pākehā. Additionally, the colonial Government had become worried the ongoing

and unchecked disruption caused by Pai Mārire adherents could spread dissent further among otherwise loyal groups of Māori.

On 2 September 1865, Governor Grey acted forcefully, issuing a Proclamation of Peace. On one hand the Proclamation claimed to end the wars in the Waikato and Taranaki and provided amnesty to all those who had acted against the Crown – which included some Māori and hapū of the north eastern Bay of Plenty. The Proclamation promised no further lands would be taken as punishment for these prior actions. On the other hand, this amnesty excluded all those ‘concerned in’ the murders of, among others, Reverend Völkner and James Fulloon. The Proclamation, published in the Gazette 5 September 1865, also declared that an expedition would be sent to the Bay of Plenty to arrest those suspected of the killings and if the suspects were not given up, the Governor would seize the lands of the tribes of anyone caught concealing the suspects, and use or sell this confiscated land to help fund or maintain security in the Bay of Plenty.

To assist in the arrest and prosecution of the suspected killers, a Martial Law Proclamation was issued on 4 September 1865. The proclamation of martial law in Ōpōtiki and Whakatāne provided the Commander of the Military Forces with summary authority and allowed the suspected killers and those suspected of aiding them to be tried by courts-martial. Further, Governor Grey provided authority to the Commanding Officer in Ōpōtiki to carry out executions without the need for further consultation if guilty murder verdicts were made. Both Proclamations were gazetted on 5 September 1865.

Subsequently, a two-pronged campaign was launched to capture the suspected killers in the Bay of Plenty. One targeted Ngāti Awa and was primarily located inland of Matatā as far as Te Teko, and utilised troops largely raised from Te Arawa, with some Ngāti Tuwharetoa. The second prong targeted Whakatōhea in Ōpōtiki and extended into Waimana Valley and the people of Tūhoe.

The Ōpōtiki ‘expedition’ consisted of an armed force of more than 500 troops with artillery. The armed force arrived in Ōpōtiki Harbour in a flotilla on 8 September 1865 with no prior warning given to Whakatōhea, Pai Mārire or any of the local inhabitants. Up until this point there had been little colonial authority or military presence in the region.

There is no extant evidence to indicate that the reasons for occupation by colonial forces (which was arguably initiated as an invasion) had been communicated to Whakatōhea or Pai Mārire at any point prior to 17 September 1865, nine days after colonial troops began landing in Ōpōtiki.<sup>353</sup> No

---

<sup>353</sup> This was the date in which a messenger returned to their fellow Pai Mārire adherents with the terms of surrender.

opportunity to surrender was given to those suspected of Völkner's murder prior to troops landing and attacking Māori present in the area. This may have been a military strategy of surprise, or it may possibly have been an oversight. But it did not bode well for diplomatic relations or goodwill between the colonial forces and Whakatōhea, Pai Mārire or other Māori present in Ōpōtiki – the majority of whom were innocent of any crime.

The colonial forces consisted of a range of military settlers, militia, rangers, and yeomanry cavalry, largely from the west coast, as well as the Whanganui Native Contingent comprising 516 men. The colonial forces faced an estimated 200 local and Pai Mārire-affiliated Māori who offered little-to-no resistance when troops began landing and forming a beachhead for further attack. Over the following few days, despite meeting little resistance, colonial forces indiscriminately shot and bombarded Māori and Pākōwhai village.

By 11 September 1865, the landing of the troops was complete and groups of Māori were pursued and killed in the vicinity of the estuary and Pākōwhai village (now Ōpōtiki township). Some largely ineffective resistance was attempted by the local Māori and Pai Mārire adherents before the defenders fled their pā and villages for the bush. It is thought that this resistance was either offered by Ngāti Rua or Ngāti Ira before they withdrew to pā at the entrance to Waioeka Gorge. Other Whakatōhea hapū from surrounding settlements are believed to have moved inland during the bombardment of Pākōwhai. In their absence their whare and crops were looted by troops and/or razed to the ground in a scorched-earth type practice.

Pākōwhai village was taken over and reinforced by the colonial forces as their base, with Völkner's church commandeered and fortified into a redoubt. From this base the colonial forces pursued the Pai Mārire adherents and Whakatōhea into the bush on the premise of capturing Kereopa and other suspects – some of whom were yet to be named. In this pursuit, several abandoned pā were taken and the surrounding crops and livestock were confiscated or destroyed.

Colonial forces were not supplied adequate rations, supplies, or horses. Instead they were expected to make do with what they could loot or confiscate from the local population of Ōpōtiki. With the customary inhabitants (Whakatōhea) withdrawing into the bush before the colonial military, their kainga, farms and crops were left unprotected. Previously a prosperous people, the crops, livestock, horses, equipment and taonga left behind by Whakatōhea were plentiful to keep the forces fed and perhaps for individual profiteers and souvenir hunters. The colonial Government benefitted too, with confiscated horses given government brands and the proceeds of the sale of some cattle going to the government. What was not wanted was destroyed. The prosperity of Whakatōhea took a combined

hit at this time, with the sustained reduced economy from the Waikato War, the loss of their accrued wealth through pillaging, and later the confiscation of their lands.

The first substantial hostilities and defining battles of the campaign began on 4 October 1865 where the plains of the Waioeka and Otara Rivers meet the Urewera. Colonial forces located three pā under the command of Hira Te Popo and principally occupied by Ngāti Ira, as well as Ngāi Tama (Tūhoe) and 'other Hauhau'. Te Tarata Pā was attacked first, attempts from those within Te Puia Pā to reinforce their comrades were routed by a successful cavalry charge. Those in Te Tarata Pā refused to surrender unconditionally and instead attempted an escape, suffering substantial losses. An attack on Te Puia Pā a few days later saw the occupants escape and withdraw further into Waioeka Gorge, to Kohipaua Pā. Walker claims that after defeat at Te Tarata and Te Puia, Whakatōhea realised that resistance was futile and subsequently large groups began to surrender.

As more and more Whakatōhea and other Pai Mārire surrendered, more and more chose to assist the colonial forces in their pursuit of Kereopa by providing supplies and acting as guides. With a scorched-earth type practice being undertaken by colonial forces, few crops and supplies were available to those in hiding and such shortages were likely a motivating factor in the surrender of many. Those considered innocent who surrendered were sent on to Ōpape or Tōreere where reserves were being arranged.

By November 1866, most of the fighting was over and the majority of Whakatōhea had surrendered and come in to take the oath of allegiance, although some were still coming in the following January of 1867. By this point, 58 were known to have been killed from Whakatōhea, with an unknown number of wounded.<sup>354</sup> A significant portion for an iwi of approximately 500 members.

A number of much smaller skirmishes continued as resistance remained among some Whakatōhea (Ngāti Ira under Hira Te Popo) and other Pai Mārire adherents (like Ngāi Tama (Tūhoe) under Tamaikowha) and Kereopa in smaller guerrilla type operations through 1866 and 1867. The colonial forces were almost entirely reduced in May 1866, with volunteer rangers, constabulary and Native Contingents taking their place on a small number of offensives.

The killing of Völkner was a civil offence committed, or at least assisted, by a small number of people but was treated as an act of war due to the Pai Mārire insurgency. Those who were captured or surrendered and were considered suspects in Völkner or Fulloon's murders or as accessories before the fact, were detained in Ōpōtiki until a court-martial could be arranged. Besides Kereopa, who would

---

<sup>354</sup> Forty-four of those killed were during the attack on and escape from Te Tarata and the resulting cavalry charge.

not stand trial until 1871 (where he was found guilty of Völkner's murder and was hanged in January 1872 in Napier), all those who would stand trial at court-martial for Völkner's murder were detained in Ōpōtiki by November 1865. The four Māori men were: Mokomoko (Ngāti Patu, Whakatōhea, and Ūpokorehe), Heremita Kahūpaea (Ūpokorehe), Hakaraia Te Rāhui (Ngāti Ira, Whakatōhea) and Paora Tai.<sup>355</sup>

The court-martials were run by military officers in Ōpōtiki between 6 and 27 November 1865. At the same time, several Māori, mostly of Ngāti Awa, were tried for the murder of Fulloon and crew, and as accessories before the fact. By the time of the trials, Governor Grey had reversed his decision to allow the Commanding Officer the right to impose an execution without his authorisation. Before Grey could issue his own decision, the Attorney General James Prendergast declared the court-martial process illegitimate in New Zealand, essentially annulling the trials and sentences.

The prisoners were sent to Auckland to stand trial before the Supreme Court, a civil court. In March 1866, a *prima facie* case was established against the prisoners and those listed above, as well as Penetito of Ngāti Awa, stood trial together for Völkner's murder. Despite often incomplete and contradictory evidence, only Paora escaped a guilty verdict. In sentencing, Paora was discharged, while the others received death sentences. On 17 May 1866, Mokomoko, Heremita Kahūpaea, and Hakaraia Te Rāhui were hanged at Mount Eden Gaol. Penetito's sentence was commuted and he was released in October 1866.

The supposed pursuit of justice for the killing of Völkner had taken over a year to bear fruit and claimed the lives of many innocent Māori along the way, including that of Mokomoko, who maintained his innocence right to the end, but was not pardoned until 1992 and 2013, well over a century later.

The pursuit of the murder suspects led to the inhabitants of the fertile valleys of Ōpōtiki to withdraw into the bush and surrender to the authority of the Crown – making way for Crown confiscation of land highly desired for further Pākehā settlement.

The next chapter of this report discusses the punitive process of land confiscation imposed upon Māori in the north-eastern Bay of Plenty in the fallout of the events described above and the land compensation and Compensation Court process which followed.

---

<sup>355</sup> In the Ngāti Awa claim Heremita Kaupaea was listed as Patuheuheu hapū (Ngāti Awa), not Whakatōhea or Ūpokorehe. It is unclear when Penetito (Ngāti Awa) is captured but he was included in those on trial at the Supreme Court but does not appear to have been court-martialled; Walker, *Ōpōtiki-Mai-Tawhiti*, p 109; Gilling, 'Te Raupatu O Te Whakatohea', pp 52 & 88



## Chapter Four: Raupatu: Confiscation of Lands

### 4.1 Chapter introduction

The unrest and events described in the previous chapter resulted in large-scale land confiscation across the north-eastern Bay of Plenty.

This chapter examines the authority under which the confiscation of land was proclaimed within the North-Eastern Bay of Plenty Inquiry District on 17 January 1866. Colonial authorities made the decision to confiscate and redistribute the lands of putative Whakatōhea ‘rebels’ following the military occupation of the district, at a time when small skirmishes continued throughout the area. This chapter outlines the context in which legislation for confiscation, namely the New Zealand Settlements Act 1863, was first introduced and developed through to its 1866 implementation in the Bay of Plenty. The chapter then discusses why confiscation was considered and implemented in the Bay of Plenty and what land the Crown opted to confiscate. It then considers the nature of the lands confiscated and those set aside for settlers and Māori.

Key sources for this chapter include official publications of the New Zealand Government, including the *New Zealand Gazette*, *New Zealand Parliamentary Debates*, *Appendices to the Journals of the House of Representatives* (AJHR), and the official communications of Governor Grey and Special Commissioner to the Bay of Plenty J A Wilson. Waitangi Tribunal reports provide further insight, particularly the Ngāti Awa and Taranaki reports, and research reports including Cathy Marr’s on Tūwharetoa ki Kawerau, Bryan Gilling’s on Whakatōhea, and an edited collection on raupatu by Richard Boast and Richard Hill.<sup>356</sup>

### 4.2 Context of confiscation in the Bay of Plenty

This section provides the context in which the legislative authority for the confiscation of Māori land was originally introduced. It also provides a brief summary of how the legislation was used prior to its implementation in the Bay of Plenty.

---

<sup>356</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report* (Wellington: Legislation Direct, 1999); Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996); Cathy Marr, ‘A Report Commissioned by the Waitangi Tribunal on the Background to the Tuwharetoa Ki Kawerau Raupatu Claim’, (commissioned research report, Wellington: Waitangi Tribunal, 1991); Bryan Gilling, ‘Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866’ (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994); Richard Boast & Richard S Hill (eds.), *Raupatu: The Confiscation of Maori Land* (Wellington: VUP, 2009)

The colonial government implemented confiscation regimes for land of alleged Māori rebels elsewhere in New Zealand prior to the military occupation of the north-eastern Bay of Plenty. The confiscation of Māori land began in Taranaki and Waikato in 1863. The idea that territory would be confiscated for reasons of punishment, financial recuperation, or redistributed as payment for soldiers following conflict had considerable roots within the British Empire, having been used to suppress and subdue local populations in Ireland and numerous other British colonies including in Governor Grey's Cape Colony (modern day South Africa).<sup>357</sup>

Historian Vincent O'Malley records that plans existed to confiscate Māori land as punishment for fighting against the Crown and to cover the costs of war well before it was legally enabled by legislation. He states that resistance to military invasion was considered sufficient grounds to confiscate lands, with the threat of confiscation made after a military invasion or occupation in some places.<sup>358</sup>

Under Governor Grey and the Domett administration, a force of 5000 military settlers was raised from the South Island goldfields, the Australian colonies, and elsewhere. This was intended to subdue the Māori resistance and to enforce the confiscation of lands by occupying them. For their service, each military settler would receive a town allotment in a new settlement as well as a farm section, sized according to rank. Field officers would receive 400 acres, captains 300 acres, surgeons 250 acres, subalterns 200 acres, sergeants 80 acres, corporals 60 acres, and privates 50 acres.<sup>359</sup>

On 5 November 1863, Native Minister William Fox introduced the New Zealand Settlements Bill to the House of Representatives. By this time, war was well underway in the Waikato and confiscation had already begun, with allotments having been surveyed and allocated to military settlers in the Waikato.<sup>360</sup> However, the Act was considered necessary by the government to validate the existing confiscation and any future awards of land.

During the passing of the Act, only a small number of members expressed opposition to the fact that the proposed bill enabled land to be taken from Māori not in 'rebellion'. The opposition that did exist was principally on the grounds that Māori were Her Majesty's Subjects with all of the corresponding rights and privileges, and that the New Zealand Constitution Act 1852 provided no authority to seize the lands of Māori, which were guaranteed to them under the Treaty of Waitangi.<sup>361</sup>

---

<sup>357</sup> Bryan Gilling, 'Raupatu: the Punitive Confiscation of Maori Land in the 1860s', in Richard Boast & Richard S Hill (eds), *The Confiscation of Maori Land: Raupatu* (Wellington: VUP, 2009), pp 13-30

<sup>358</sup> Vincent O'Malley, *The Great War for New Zealand: Waikato 1800-2000* (Wellington: BWB, 2016)

<sup>359</sup> 'Volunteer Militia Settlers', *New Zealand Gazette*, 5 August 1863.

<sup>360</sup> Waitangi Tribunal, *The Taranaki Report*, p 110

<sup>361</sup> Waitangi Tribunal, *The Taranaki Report*, pp 110-112

Fox accepted that the Act would result in blanket confiscation that could impinge upon those Māori not in 'rebellion', but stressed that the establishment of a Compensation Court under the New Zealand Settlements Act 1863 would allow Māori who wrongfully lost lands to apply for compensation.<sup>362</sup> After an amendment was made to the original 1863 Act, 'rebels' who surrendered by a certain date would also be eligible to have their cases heard by the Compensation Court, while those that did not would be excluded from the compensation process.<sup>363</sup>

Justification for the confiscation of land proposed by politicians and the general Pākehā public at the time included:

- That the taking of land through conquest was accepted within Māori custom
- That the need to repay imperial war loans would be eased by obtaining land cheaply to be on-sold for a profit
- That relieving Māori of their land would 'civilise' them, by forcing them to labour for a living.<sup>364</sup>

Governor Grey provided his assent to the New Zealand Settlements Bill on 3 December 1863. As per legislative convention, a copy of the Act was duly sent to the Secretary of State, the Duke of Newcastle, on 6 January 1864 for scrutiny.<sup>365</sup> The Duke's replacement, Edward Cardwell, accepted the need for confiscation, but also provided Grey with several objections to the Act, including that:

- It was a permanent measure
- It could be applied to Māori of any part of the North Island
- It allowed unlimited confiscation
- It allowed confiscation of land from those not in 'rebellion'
- Decisions could be made in secret without provision for debate or appeal
- The provision for compensation was too limited
- The permanence of the law formed a 'standing qualification of [limitation on the rights guaranteed by] the Treaty of Waitangi'.<sup>366</sup>

Cardwell advised against harsh or excessive implementation of the law and proposed that the law be limited to two-or-so years, and only applied after attempts to negotiate land through cession from

---

<sup>362</sup> Waitangi Tribunal, *The Taranaki Report*, pp 110-112; William Fox, NZPD, 5 November 1863, pp 782-783

<sup>363</sup> Waitangi Tribunal, *The Taranaki Report*, p 111; New Zealand Settlements Act 1863, sec 6

<sup>364</sup> Waitangi Tribunal, *The Taranaki Report*, p 113

<sup>365</sup> John E Martin, 'Refusal of Assent – A Hidden Element of Constitutional History in New Zealand', *VUW Law Review*, vol 41, no 1, p 51

<sup>366</sup> Waitangi Tribunal, *The Taranaki Report*, pp 115-117; Cardwell to Grey, 26 April 1864 in RDB, vol 17, pp 6684-6685

defeated tribes had failed.<sup>367</sup> Cardwell encouraged Māori to cede their lands as a sign of their acceptance of their fate, and Grey to exercise a moderating influence over his ministers.<sup>368</sup> Further, he recommended that an independent commission be established to decide which lands should be confiscated, and that confiscation should only be approved by the Governor when 'just and moderate'.<sup>369</sup>

The New Zealand Settlements Act 1863 and the Suppression of Rebellion Act 1863 (discussed below) were passed in early December. Both pieces of legislation were duly submitted to the Crown Law Office, which deemed they did not exceed the power entitled to the New Zealand General Assembly and were not repugnant to the Laws of England.<sup>370</sup>

By July 1864, the government had expanded its arguments as to why it was necessary to confiscate Māori land. William Fox MP wrote at this time to the Bishop of Waiapu that confiscation was needed to:

1st, Permanently to impress the natives with the folly and wretchedness of rebellion; 2nd, to establish a defensive frontier; 3rd, to find a location for a European population which may balance the preponderance of the natives who occupy the rebel districts; 4th, in part to pay off the cost of a war forced by the natives upon the Colony. While achieving these ends, they would reserve for the future use of the natives so large a portion of the confiscated land as would enable them to live in independence and comfort, and they would secure it to them by such individual titles under the Crown as might tend to elevate them above that communal system (or no system) of life which lies at the root of their present uncivilised state.<sup>371</sup>

However, Fox, Frederick Whitaker (in the Legislative Council), and their associated ministers clashed with Governor Grey as to how exactly this should be executed. The relationship between Grey and leading ministers of the colonial government had broken down over 1864, principally in relation to policy around peace, confiscation of Māori land, and military settlement.<sup>372</sup> In September 1864, Grey attempted to push his own peace terms upon Whitaker, Fox, and their ministers by submitting a proclamation and requesting it be printed immediately.<sup>373</sup> However, this led Whitaker and his associated ministers to resign in late September. Their replacements duly provided their approval,

---

<sup>367</sup> Waitangi Tribunal, *The Taranaki Report*, p 116; Cardwell to Grey, 26 April 1864 in RDB, vol 17, pp 6684-6685

<sup>368</sup> Allen, 'An Illusory Power?', p 128

<sup>369</sup> Cardwell to Grey, 26 April 1864 in RDB, vol 17, pp 6684-6685

<sup>370</sup> Waitangi Tribunal, *The Taranaki Report*, p 117

<sup>371</sup> William Fox, 'Papers Relative to Native Affairs: Enclosure 3 to No. 1', 4 July 1864, AJHR, 1864, E-2, pp AJHR, 1864, E2, pp 77-78

<sup>372</sup> Allen, 'An Illusory Power?', pp 122-131

<sup>373</sup> Allen, 'An Illusory Power?', pp 129

allowing the proclamation to proceed in late October 1864.<sup>374</sup> The Waitangi Tribunal's report on raupatu in Taranaki suggests that Grey was attempting to assert power over his ministers, rather than actually limit the confiscation of Māori land.<sup>375</sup>

On 30 January 1865, as a result of the proclamation, land confiscation in Taranaki finally proceeded. The Tribunal has found that the steps taken in enacting confiscation in Taranaki differed from those authorised by the New Zealand Settlements Act 1863 in several ways.<sup>376</sup> The clearest difference was that in Taranaki Māori land was confiscated where Māori had not been in 'rebellion', leading to more land being taken than the legislation allowed at the time. Subsequently, the Tribunal found that, 'an Act that was passed for the maintenance of peace was converted into an Act for the furtherance of colonisation'.<sup>377</sup> This indicates that at its earliest implementation, land confiscation was executed punitively, over and above what was legislated.

By the time confiscation was being implemented in the Bay of Plenty the legislation was being:

used to enforce government political and legal dominance and to assist with both the acquisition of land and the large scale change in Māori land tenure to Crown grants and individualisation of ownership.<sup>378</sup>

In practice, this meant a substantial deviation from the scheme approved by British authorities as the government moved to take whole districts for settlement rather than smaller defined areas within a district.<sup>379</sup>

#### 4.3 The authority for confiscation

This section provides analysis of the legislation which led to and provided authority for the confiscation of Māori lands within the North-Eastern Bay of Plenty Inquiry District. Much of this legislation also concerned compensation, but this aspect of the legislation is analysed separately in chapter 5 of this report.

---

<sup>374</sup> Waitangi Tribunal, *The Taranaki Report*, p 117

<sup>375</sup> Waitangi Tribunal, *The Taranaki Report*, p 117

<sup>376</sup> Waitangi Tribunal, *The Taranaki Report*, pp 121-124

<sup>377</sup> Waitangi Tribunal, *The Taranaki Report*, p 130

<sup>378</sup> Marr, 'Background to the Tuwharetoa Ki Kawerau Raupatu Claim', p 17

<sup>379</sup> NZ Gazette, 5 Sept 1865, no 35, pp 265-267

#### 4.3.1 New Zealand Settlements Act 1863

Sometimes justified as an attempt to secure peace, the New Zealand Settlements Act 1863 enabled the confiscation of Māori lands as punishment for ‘rebellion’, and facilitated Pākehā settlement on these lands.

The Act and its amendments provided the basic legislative authority for confiscation of and compensation for Māori lands. According to the preamble of the Act, it was intended to provide security for the peaceful inhabitants of New Zealand, both Māori and Pākehā, encourage law and order and the authority of the Crown, and inhibit future attempts at insurrection or rebellion. The means by which the Act sought to do this was through the planting of settlers ‘able to protect themselves and to preserve the peace’ across the frontiers of the North Island.<sup>380</sup>

The New Zealand Settlements Act 1863 was also intended to facilitate the compulsory taking of land from North Island Māori, to allow general Pākehā settlement. The target of the confiscation legislation was stated to be any:

Native Tribe or Section of a Tribe or any considerable number thereof [who] has since the first day of January 1863 engaged in rebellion against Her Majesty's authority.<sup>381</sup>

Section 2 of the Act stated that once ‘rebellion’ was identified, the Governor in Council was entitled to declare the lands associated with these peoples as a District of Crown Lands and section 3 of the Act enabled settlements for colonisation to be defined and awarded in these Districts. Section 4 stated the lands for the settlements could be reserved or taken by the Governor and deemed to be Crown lands free of all claims and interest from others as soon as the Governor in Council declared it to be required under the Act and subject to its provisions. Further, sections 16 to 20 allowed for townships and farms to be laid out for military settlers and townships, suburban, and rural allotments to be surveyed and sold or disposed of. The Act also allowed for compensation to be awarded to eligible Māori who had claims or interest in the confiscated lands and submitted to the authority of the Crown. Compensation is discussed further in chapter 5 of this report.

#### 4.3.2 New Zealand Settlements Amendment Acts

The New Zealand Settlements Amendment Act was passed in December 1864. The key change, in section 3, was the introduction of a 3 December 1865 termination date for the legislation.

The Act was amended again with the New Zealand Settlements Amendment and Continuance Act 1865. This made the 1863 Act (as amended in 1864) perpetual. It also limited the period in which the

---

<sup>380</sup> New Zealand Settlements Act 1863, preamble

<sup>381</sup> New Zealand Settlements Act 1863, section 2

Governor in Council could declare Districts, and reserve and take land for settlement, to before 3 December 1867.

In October 1866, a further amendment to the New Zealand Settlements Act was passed.<sup>382</sup> Under section 5, the amendment allowed the Governor to make reserves from confiscated lands. But most significantly, under section 6 the Act declared all the proceedings already undertaken under the New Zealand Settlements Acts and amendments, both future and retrospectively, to be 'absolutely valid'. This prevented any challenge to the legality of the scale or method of confiscation 'by reason of any omission or defect'.

Land in the Bay of Plenty District had been confiscated earlier in 1866, so this amendment applied to confiscation and compensation processes and decisions there.<sup>383</sup> The Tribunal's Ngāti Awa report has described the compensation process in the Bay of Plenty as being defined by the 'arbitrary nature of Wilson's determinations and the blatant inequality of treatment' between different iwi and 'loyal' and 'rebel' Māori in the Compensation Court.<sup>384</sup> According to the Tribunal's report, the government encroached on the 'subservient' courts process through Crown Agent and Special Commissioner J A Wilson to secure its own objectives regarding land allocation and compensation.<sup>385</sup> Despite this, under section 6 of the 1866 amendment, Ngāti Awa were deprived of the right to petition or seek redress. It was in this same climate that Whakatōhea and the other iwi and hapū of the North-Eastern Bay of Plenty Inquiry District had their land confiscated and subsequently sought compensation.

#### 4.3.3 Other legislation

The Suppression of Rebellion Act 1863 was passed in early December 1863 in an effort to extend existing legislation thought to be 'wholly inadequate' to stop the ongoing 'subversion' by some Māori of the authority of the Crown and government. The Act suspended the right to trial before imprisonment and established that military courts would be used to trial all who were charged with rebellion. Soon after, the Loan Act 1863 was passed to raise £3 million to establish the military settler scheme. The intention was that once land was confiscated it could be sold for considerable profit and the loans repaid.

Legislation was also passed to protect those serving the Crown to suppress the Māori rebellion in the mid-to-late 1860s from being pursued for damages caused by their actions. The Indemnity Act was

---

<sup>382</sup> New Zealand Settlements Acts Amendment Act 1866

<sup>383</sup> The confiscation of land in the Bay of Plenty is discussed further in this chapter below.

<sup>384</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 87

<sup>385</sup> The actions of Wilson and the Compensation process are discussed further in chapters 4 and 5. Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 87

first passed in 1865 and was subsequently amended in 1867 and 1868. This meant that Māori were unable to recoup their considerable loss of produce, stock, and property which were commandeered or destroyed by occupying forces and settlers for their benefit or vengeance.

The Confiscated Lands Act 1867 opened up the award of compensation further to also include those 'surrendered rebels' and others omitted under the terms of the 1863 Act, and specifically allowed compensation to be awarded to claimants that had previously been rejected or not issued 'sufficient compensation' by the Compensation Court.

#### 4.3.4 Outlying Districts Police Act 1865

On 9 October 1865, the Outlying Districts Police Act was passed allowing the Governor to call upon local Māori and other inhabitants to assist with the arrest of anyone suspected of murder, attempted murder, rape, burglary, arson, or armed resistance within the district.<sup>386</sup> Further, if the suspects were not arrested within the given timeframe, the districts in which the crimes were committed and any district in which the suspect was 'concealed harboured or protected' could be defined by the Governor and the lands within confiscated by the Crown<sup>387</sup> The Outlying Districts Police Act 1865 would have allowed the confiscation of land in the Bay of Plenty, but it does not appear to have been implemented in the district. Instead, the land was taken under the New Zealand Settlements Act 1863 and its amendments, as discussed later in this chapter.

#### 4.3.5 The Peace Proclamation 1865

As discussed in chapter 3, on 2 September 1865, Governor Grey declared an end to the Taranaki and Waikato Wars.<sup>388</sup> The peace proclamation, which was printed in the *New Zealand Gazette* on 5 September 1865, claimed the Governor had only taken up arms to protect European settlements and to punish those Māori who had resorted to violence. The Governor declared peace as 'sufficient punishment has been inflicted'. Under the proclamation, none of those who had previously taken up arms against the authority of the Crown would be prosecuted and no more lands would be taken in relation to their prior actions. This suggests that land later confiscated in the north-eastern Bay of Plenty could only have been taken for alleged acts of rebellion that occurred after this peace proclamation was issued. However, the amnesty also excluded those who were 'concerned in' twelve

---

<sup>386</sup> Outlying Districts Police Act 1865, section 2

<sup>387</sup> Outlying Districts Police Act 1865, section 3 and 4

<sup>388</sup> Hostilities actually continued in Taranaki until November 1866; The New Zealand Settlements Act 1863, section 5



particular murders, the named victims of which included those of Reverend Völkner and James Fulloon ‘and his companions’.

Specifically, an expedition would be sent to the Bay of Plenty to arrest those believed to have been involved in the killings of Völkner and Fulloon. The *Gazette* notice stated in reference to those concerned:

If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.<sup>389</sup>

As discussed in the previous chapter, the proclamation and ultimatum was not communicated to Māori in Ōpōtiki prior to the arrival and landing of the ‘expedition’ of colonial military forces in Ōpōtiki. These forces pursued the killers of Völkner inland from Ōpōtiki, while in Whakatāne, Te Arawa forces had already been in pursuit of Fulloon’s killers for weeks.<sup>390</sup> The authority and power of these campaigns, which involved hundreds of colonial troops, were bolstered by the proclamation of martial law in the region.

#### 4.3.6 Martial Law Proclamation

The 5 September 1865 *Gazette* notice also proclaimed martial law over the districts of Ōpōtiki and Whakatāne. Martial law provided the Commander of the Military Forces with summary authority which facilitated those suspected of the killing of Völkner and Fulloon and those suspected of aiding and abetting them to be tried by court-martial.<sup>391</sup> As discussed in the previous chapter, it was later established that martial law was not sufficient to legitimise a court-martial of civilians, and the trials and sentences were annulled.

In Whakatāne, Te Arawa troops had already been in pursuit of Fulloon’s killers for weeks, acting under the authority of effecting arrests for civil law warrants. As the Tribunal’s Ngāti Awa raupatu report has established, there is no evidence that following the declaration of martial law that Te Arawa troops were recommissioned as a military force for the purposes of war.<sup>392</sup>

The pursuit and prosecution of these murder suspects is discussed in chapter 3 of this report, where the Crown was both assisted and inhibited by Māori of the Inquiry District.

---

<sup>389</sup> NZ Gazette, 5 Sept 1865, no 35, pp 265-267

<sup>390</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, pp 59-60

<sup>391</sup> NZ Gazette, 5 Sept 1865, no 35, pp 267-268

<sup>392</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 60

#### 4.4 Why was confiscation introduced to the Bay of Plenty?

Confiscation was implemented in the Bay of Plenty under the New Zealand Settlements Act 1863 on 17 January 1866, when the Bay of Plenty District was proclaimed in response to action by Māori considered to be in ‘rebellion’. The Act stated that the confiscated lands would be supplied to military settlers who would settle the lands and preserve the peace. The following section discusses the requirements of military settlement and how ‘rebellion’ was interpreted by government officials, despite its lack of explicit definition, in the late 1860s in the Bay of Plenty.

##### 4.4.1 Military settlement

A key justification under the New Zealand Settlements Act 1863 for land confiscation in the Bay of Plenty district was to provide land to military settlers who could occupy it and offer ‘permanent protection and security of the well-disposed Inhabitants of both races’, the ‘prevention of future insurrection or rebellion’ and the ‘establishment and maintenance’ of law and order and the Crown’s authority. Therefore, the Act specified that land could only be confiscated to provide land for military settlement and had to be fit for purpose.<sup>393</sup>

However, the 440,000 acres confiscated far exceeded what was needed to maintain the relatively small number of military settlers (and their families). This is demonstrated in that only 23,461 acres, including those settlements at Ōpōtiki, Ōhiwa, and Whakatāne, were allocated for the total of military settlement (the allocation of land is discussed further in chapter 5 of this report).<sup>394</sup>

As the Tribunal’s Ngāti Awa raupatu report points out, it would certainly have been impossible to break-in such a large area of land and settle it in time to keep the peace.<sup>395</sup>

Further, the vast majority of the confiscated land was unsuitable for military settlement. Much of the land was rough hill country, swampland, or thick bush – some of which remains unsettled to this day.<sup>396</sup>

The Tribunal’s Ngāti Awa raupatu report also found that ‘far more land was taken than the Act allowed’ in the Bay of Plenty, and that this surplus was intended for Pākehā settlement over time – despite their being no allowance for land to be taken for this purpose under the Act.<sup>397</sup>

---

<sup>393</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 6

<sup>394</sup> J H H St John, ‘Further Papers Relative to Confiscated Lands’, 12 August 1873, AJHR, 1873, C-4b, pp 5-6; J A Wilson, Special Commissioner & Crown Agent at Opotiki, to Dr Pollen, Agent for General Government, Auckland, 26 April 1867, ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>395</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 6

<sup>396</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 6

<sup>397</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 6

#### 4.4.2 'Rebellion' in the New Zealand Settlements Act

For the New Zealand Settlements Act 1863 to be enforced the Governor needed to be satisfied that 'rebellion' had occurred. From that point, any land owned by, in the possession of, or occupied by those iwi, hapū, or individuals involved in 'rebellion' could be declared a district under the Act. With the Bay of Plenty District established, the Governor could under the Act then proceed to confiscate ('reserve and take the lands') for settlement.

The existence of 'rebellion' did not need to be judicially proven as the Act declared that insurrection and rebellion existed in law, whether or not it existed in fact.<sup>398</sup> All that was required was for Governor Grey to be 'satisfied' that 'rebellion' had occurred for confiscation to be enforced.

The Act itself did not define what 'rebellion' entailed, but section 5 of the Act outlined all those persons who were not eligible for compensation (despite holding a title interest) as any person:

(1.) Who shall since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand or

(2.) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or

(3.) Who shall have counselled advised induced enticed persuaded or conspired with any other person to make or levy war against Her Majesty or to carry arms against Her Majesty's Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or

(4.) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or-

(5.) Who on being required by the Governor by proclamation to that effect in the Government Gazette to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.<sup>399</sup>

Although not explicit, this criteria within the context of the wider Act provided parameters for what 'rebellion' meant in practice to colonial authorities. Essentially a 'rebel' was anyone considered to have fought against the Crown, or who had encouraged or facilitated opposition to the Crown, or been involved in an attack on others or the property of others, since 1 January 1863.

---

<sup>398</sup> Waitangi Tribunal, *The Taranaki Report*, pp 119 & 129

<sup>399</sup> New Zealand Settlements Act 1863, section 5

#### 4.4.3 'Rebellion' following the Peace Proclamation

Confiscation in the Bay of Plenty occurred just four months after the Peace Proclamation which pardoned all actions prior to the proclamation. Therefore any 'rebellion' to legitimise land confiscation would need to have occurred in the four or so months between the Peace Proclamation published on 5 September 1865 and the initial proclamation of the Bay of Plenty district for confiscation on 17 January 1866.

The actions perceived to be 'rebellion' by colonial authorities are explicit in Taranaki and the Waikato where active wars had occurred between the government and Māori. The north-eastern Bay of Plenty had not witnessed such actions that could be clearly labelled as 'rebellion'. However, some resistance did occur during this short four-month period.<sup>400</sup>

As discussed in the previous chapter of this report, troops arrived unannounced in Ōpōtiki to arrest Völkner's killers, they attacked local Māori on several occasions, but only communicated their terms of engagement nine days after their arrival. These troops were met by only minor defensive resistance as most local Māori and Pai Mārire adherents withdrew inland. Once it was clearly understood that the intention of colonial forces was to acquire the suspects of Völkner's murder there was some further resistance to arrests from some Whakatōhea and others. There were also short-lived attempts by some Whakatōhea and others to hold defensive positions in pā. It is difficult to perceive how this minor defensive resistance could be defined as 'rebellion'. As the Tribunal's Ngāti Awa report has found, there was no organised resistance to overthrow the New Zealand government from the north-eastern Bay of Plenty.<sup>401</sup>

An important consideration, which has been discussed by the Waitangi Tribunal in its Taranaki raupatu report, is that under common law, defending oneself or one's own property against an unlawful attack could not be defined as 'rebellion', and only became so following an act of counter-aggression.<sup>402</sup> The hostilities between colonial forces and Māori in the Bay of Plenty following the occupation of their rohe has been discussed in the previous chapter of this report. Legal expertise would be required to determine the legality of the colonial military's activities in Ōpōtiki, and whether this permitted the level of defensive response from Whakatōhea and other Māori, or whether Māori actions constituted an act of counter aggression.

Similarly, between September (when the Proclamation of Peace was published) and January 1866 (when the Bay of Plenty confiscation district was declared), there were no significant offensive attacks

---

<sup>400</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 63

<sup>401</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 63

<sup>402</sup> Waitangi Tribunal, *The Taranaki Report*, pp 129-130

on colonial forces in the region of Ōpōtiki. Instead, Whakatōhea and other iwi (including Pai Mārire adherents) withdrew from the attacks of colonial forces and were pursued inland. When they were given an appropriate opportunity, they largely surrendered and took the oath of allegiance. Only relatively small groups of dedicated Pai Mārire adherents held out for more than a few months.

As also discussed in the previous chapter, some hapū of Whakatōhea are thought to have played no part in the killing of Völkner, or the armed resistance which met the colonial forces' attempts to arrest suspected killers in Ōpōtiki. In this respect, it is difficult to perceive how they were guilty of 'rebellion' and therefore subject to land confiscation. Yet, by association, their land was still confiscated and they were forced through the Compensation Courts to prove their innocence and seek an award of land. The Compensation Court process is discussed further in the next chapter of this report.

#### 4.4.4 Confiscation 'completely valid' and incontestable

The exact activities or events which allowed Governor Grey to 'be satisfied' that 'rebellion' had occurred in the Bay of Plenty are not apparent from the sources consulted. However, the Bay of Plenty was declared a district under the New Zealand Settlements Act in January 1866 and confiscation followed. By October 1866, as discussed above, the passing of the New Zealand Settlements Acts Amendment Act 1866 served the purpose of establishing these moves to take 440,000 acres of land as 'completely valid' and incontestable.<sup>403</sup> How 'rebellion' had been defined, when it was implemented in the Bay of Plenty, and whether this was justifiable could no longer be contested in court.

#### 4.4.5 Sim Commission view

In 1928, the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives (the 'Sim Commission') suggested it was clear that Māori from Ōpōtiki and Whakatāne were engaged in rebellion when they resisted the occupation of colonial forces sent to capture those suspected of the killings of Völkner and Fulloon and that land confiscation correctly followed under the New Zealand Settlements Act 1863.<sup>404</sup> Much of the key context of this resistance, including the colonial force leading with violence before the Proclamation of Peace or Martial Law had been communicated to Māori in Ōpōtiki, is absent from the Sim Report.

---

<sup>403</sup> The New Zealand Settlements Acts Amendment Act 1866, section 6

<sup>404</sup> W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

## 4.5 The confiscation of lands

This section discusses the land confiscated under the New Zealand Settlements Act 1863 in the Bay of Plenty. It outlines the boundaries of the confiscation and how these changed and the character of the land that was confiscated.

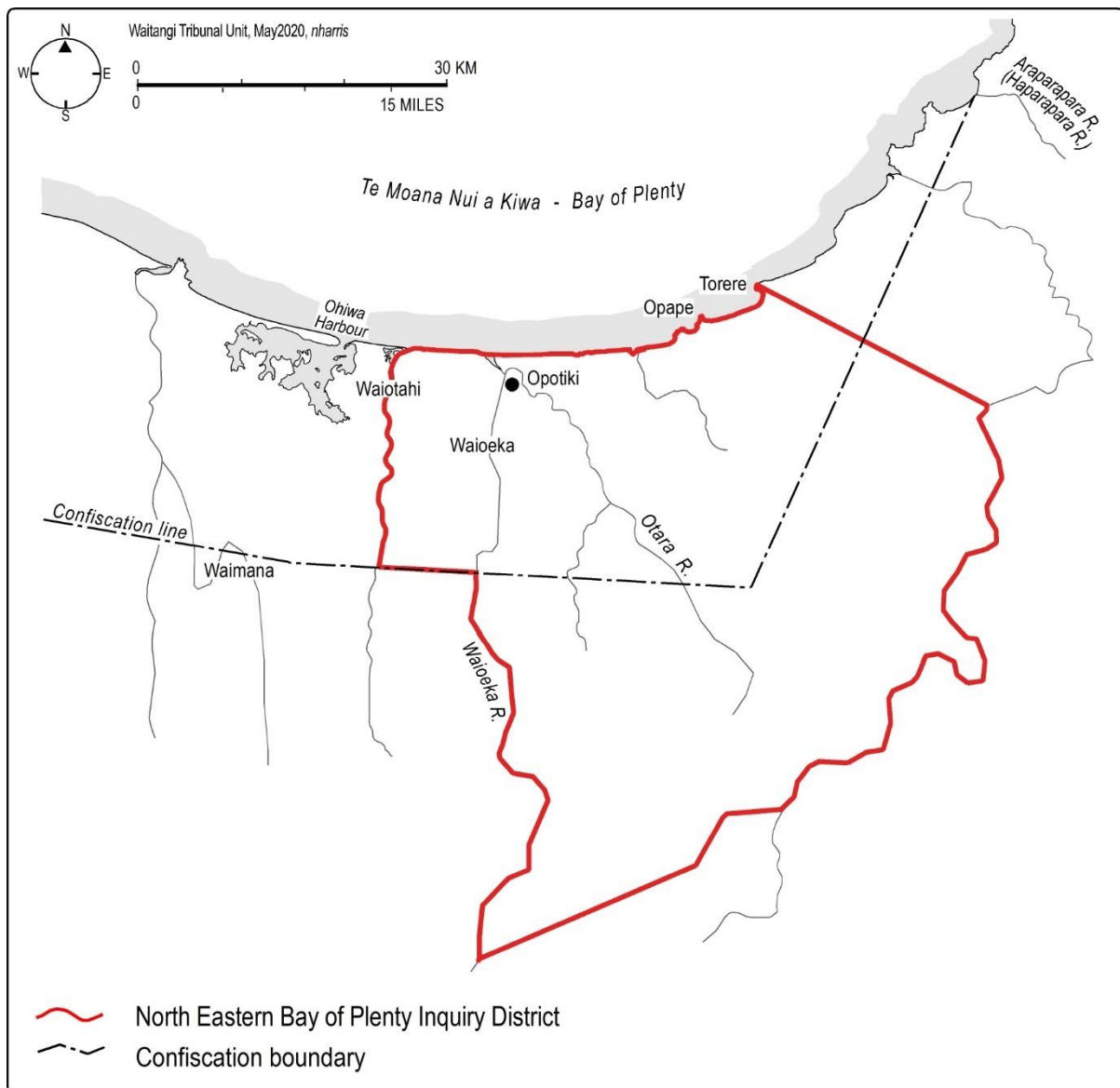


Figure 5: A map showing the overlap of the 1866 confiscation boundary and the North-Eastern Inquiry District<sup>405</sup>

### 4.5.1 What land was confiscated?

In January 1866, the Bay of Plenty district was officially gazetted for the purposes of land confiscation under the New Zealand Settlements Act 1863. Unlike in previous proclamations of districts, this

<sup>405</sup> Therese Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5, p 49; New Zealand Gazette, 27 September 1866, p 364

involved the immediate confiscation of the entire district's lands for settlement, rather than certain areas within it as had occurred elsewhere.<sup>406</sup> The boundaries of the area were described as:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south to the Tarawera River; thence by a straight line to the summit of Putanaki [Putauaki] (Mount Edgecomb [Edgecumbe]); thence by a straight line in an easterly direction to the confluence of the Rivers Tauwhare and Ohiwa; thence by a line running due east for twenty-five miles; thence by a line to the mouth of the Aparapara [Haparapara] River, in the Bay of Plenty.<sup>407</sup>

As this initial description of the confiscated land mistakenly described the Ōhiwa Harbour as a river, Special Commissioner J A Wilson wrote to the Auckland superintendent with the correction on 1 May 1866.<sup>408</sup>

The correction to the confiscation boundary was gazetted on 27 September 1866 as follows:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence by the summit of (Mount Edgecombe [Edgecumbe]) Putanaki [Putauaki], thence by a straight line in an easterly direction to a point eleven miles due south from the entrance to the Ōhiwa Harbour, thence by a line running due east for twenty miles, thence by a line to the mouth of the Aparapara [Haparapara] River, and thence following the coast line to the point of commencement at Waitahanui.<sup>409</sup>

The total amount of land confiscated in the Bay of Plenty was estimated to be 440,000 acres by Wilson at the time.<sup>410</sup> The table at Figure 6 below depicts how Wilson intended to allocate these lands in 1867. By June 1867, a substantial portion of these confiscated lands had been returned or given to Māori (this process is discussed in chapter 5 of this report). An inaccurate trigonometrical observation on the confiscation boundary led to the Crown losing 5,000 acres from their expected total. Te Arawa, who had fought alongside the Crown, were awarded 87,000 acres of the confiscated lands. Meanwhile, by instruction of Colonel Haultain and Whitaker a 57,000-acre block was left 'to the Natives' on the eastern boundary of the confiscated area. A further 96,000 acres were given back to 'rebels' in an area

---

<sup>407</sup> New Zealand Gazette, 11 January 1866, no 3, p 17

<sup>408</sup> J A Wilson, to Auckland Superintendent, 1 May 1866, RDB, vol 133, pp 51036-51037

<sup>409</sup> New Zealand Gazette, 27 September 1866, no 52, p 364

<sup>410</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, p 3; earlier estimates had the figure as high as 480,000 acres, see Crosbie Ward, 'Report of the Select Committee on Confiscated Lands', 14 August 1866, AJHR, 1866, F-2, p 4

which Wilson reported ‘the giving back is but nominal for the Natives would not have given it up’.<sup>411</sup>

To the east of Tōrere, this area given back was largely outside of the Inquiry District.

The proclamation of confiscation in the Bay of Plenty under the New Zealand Settlements Act 1863 and amendments stipulated that the land confiscated in the Bay of Plenty would be used for ‘settlements’, specifically military settlement. However, in practice, as little as 76,558 acres of the 440,000 acres taken had been allocated to military settlements by June 1867.<sup>412</sup>

Probable error in not establishing confiscated boundary by trigonometrical observation	5,000
Given to claimants by award by arrangement, and abandoned	5,442
Unarranged	38,000
Act not enforced in eastern portion of the district, over	57,000
Given to the Arawa Tribe	87,000
Given back to rebels	96,000
Balance to Government	151,558
<b>Total acres confiscated</b>	<b>440,000</b>

A much later 1928 estimate from the Sim Commission raised the acreage confiscated to 448,000 acres.<sup>414</sup> The figures of lands lost by different iwi presented below are merely indicative, they are based on ‘Heaphy’s plan’ of tribal boundaries which is known to be contested. Within the confiscated lands Whakatōhea lost 143,870 acres (29 per cent) of their original holdings, maintaining 347,130 acres (it is not explicit whether Ūpokorehe is included in this figure); while Ngāti Awa lost 56,799 acres, maintaining 50,321 acres; and Tūhoe lost 14,731 acres, maintaining 1,234,549 acres.<sup>415</sup>

Sources consulted for this report did not reveal how the confiscation boundary was determined. However, Marr points out that a map sent to the imperial government in 1868 appears to show a neat

<sup>411</sup> J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, p 3

<sup>412</sup> J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, p 3 AJHR, 1867, A18, p 3

<sup>413</sup> J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, p 3

<sup>414</sup> W A Wilson, V H Reed, W Cooper, Report on ‘Confiscated Lands and Other Grievances’, 29 June 1927, AJHR, 1928, G-7, pp 21-22

<sup>415</sup> An important note on the Ngāti Awa figure of lands lost is the 87,000 acres of land which was claimed by Te Arawa and ceded to them by the Crown, an area which was also claimed by Ngāti Awa. If this figure is included in the Ngāti Awa totals they were left with just 35 per cent of their original Bay of Plenty lands.



division between the lands of those believed to have murdered Völkner (Whakatōhea) and those believed to have murdered Fulloon (Ngāti Awa).<sup>416</sup> This may indicate an intentional targeting of the lands associated with these iwi for these suspected crimes.

Iwi and hapū boundaries were traditionally dynamic and defined around significant landmarks such as rivers and mountain ranges. Gilling notes that there was no accounting for such tribal boundaries in a linear line as is executed in the confiscation boundary. He argues that:

Rather, it looks like a method of extracting from Maori ownership the fertile and cultivable coastal plains of the eastern Bay of Plenty, suitable for Pakeha settlement and valuable for future sale, leaving Maori with the difficult inland hills, gorges and valleys.<sup>417</sup>

Gilling suggests that it may have been intended by authorities for the Compensation Court to add 'subtlety and balance' to the boundaries and to establish whose land had been confiscated.<sup>418</sup>

For Whakatōhea at least, when the Crown was selecting lands for confiscation, no apparent distinction was made by officials between the land holdings of different hapū or their varying culpability in the killing of Völkner or any resistance to the arrest of Völkner's suspected killers.<sup>419</sup> To be eligible for land compensation, individuals of Whakatōhea had to agree that they had been rebels and pledge allegiance to the Crown, even if they had not personally been in rebellion, as many had not.<sup>420</sup>

It is interesting to note that the Sim Commission determined that the confiscation of Whakatōhea lands was not 'fair' or 'just' and the amount taken 'excessive... but only to a small extent' and recommended a small annuity of £300 to provide higher education for the children of Whakatōhea.<sup>421</sup>

#### 4.5.2 Character of the confiscated land & boundary

Marr provides a brief description of the general qualities of the land within the confiscation boundary. Much of the confiscated land included flat land suitable for European-style settlement, cropping, and farming, and some of the area's most promising routes for inland and regional communication. Little of this prized land would be returned to Māori. Beyond these flat areas, the confiscation area

---

<sup>416</sup> An interpretation of this map (referenced as from GBPP (IUP) v 15 opposite p 126) was included in Marr's report and is attached as Appendix 4. Marr, 'Background to the Tuwharetoa Ki Kawerau Raupatu Claim', pp 30-32

<sup>417</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 123

<sup>418</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 123

<sup>419</sup> Opotiki Minute Book, 12, pp 281-282 in Wai 87, A2, p 40

<sup>420</sup> Opotiki Minute Book, 12, pp 281-282 in Wai 87, A2, p 40

<sup>421</sup> W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 22

extended 'to more mountain and hill country around the edges'. There was also a 'large swamp area' which was 'potentially valuable for settlement, although it was unlikely to be useful immediately'.<sup>422</sup>

As Marr's description intimates, much of the confiscated land was undesirable for both Māori and European settlers, owing to the land being mountainous or swampy. In a letter to Premier Stafford in early 1866, Whitaker (as Superintendent for Auckland Province), provided general details about the acreage and usefulness of confiscated lands in Tauranga and Ōpōtiki. He wrote that an approximate 50,000 acres had been confiscated in Tauranga and around 480,000 (much higher than later official estimates) around Ōpōtiki, with 'rather less than one-third, or about 175,000 [acres], ... considered good'.<sup>423</sup>

Later that year in August 1866, the report of the Select Committee on Confiscated Lands found that from the 480,000 acres expected to be taken within the confiscation boundary, only around 100,000 acres may be 'useful land'.<sup>424</sup> However, at this early stage of the confiscation process, the committee noted that there was still some confusion about the exact areas covered by the boundary and how much land was likely to be returned to 'friendly' Māori and 'returning rebels'.<sup>425</sup>

A schedule in an 1867 memorandum to the government from Crown Agent J A Wilson provided a description of some of the confiscated lands.<sup>426</sup> The schedule contained general details of the land that had (at that point) been returned to 'rebels' and further lands that would soon be available for pending compensation awards. Of the land falling under these categories, Wilson estimated that 18,000 acres was 'agricultural land', 54,000 acres was swamp land, and 62,000 acres was 'mountainous country, say half of it very barren'. Wilson estimated that 151,558 acres of confiscated land remained with the government in 1867, from which plots would be offered to military settlers.<sup>427</sup>

Therefore, much of the lands confiscated but returned or likely to be returned to Māori would have been unsuitable for cultivation or other productive use. The lion's share of the 175,000 'good' acres

---

<sup>422</sup> Marr, 'Background to the Tuwharetoa Ki Kawerau Raupatu Claim', p 31

<sup>423</sup> F Whitaker, 'Further Papers Relative to The Confiscated Lands', 30 January 1866, AJHR, 1866, A-2, No. 10, pp 6-9. The discrepancy here between the Select Committee's numbers and Whitaker's may be explained by the general confusion regarding which lands were included in the confiscation boundary. The initial confiscation line gazetted on 16 January 1866 was poorly conceived of, making little sense geographically. It had to be redefined on 1 September 1866. See Gilling, 'Te Raupatu O Te Whakatohea', pp 122-124; New Zealand Gazette, 18 January 1866, no 3, p 17; New Zealand Gazette, 27 September 1866, no 52, p 364

<sup>424</sup> Crosbie Ward, 'Report of the Select Committee on Confiscated Lands', 14 August 1866, AJHR, 1866, F-2, p 3

<sup>425</sup> Crosbie Ward, 'Report of the Select Committee on Confiscated Lands', 14 August 1866, AJHR, 1866, F-2, p 3

<sup>426</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, p 3

<sup>427</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, p 3; Marr, 'Background to the Tuwharetoa Ki Kawerau Raupatu Claim', p 32

Whitaker mentioned in 1866 went to military settlers or was put up for sale to other settlers and speculators.

The land these government agents deemed 'good' almost certainly refers to the area around Ōpōtiki and the Ōhiwa Harbour. Most of this land was not returned to Māori, bar a few small reserves around Ōpōtiki and the Ōhiwa Harbour, some of which were returned via out-of-court settlements between various 'groups and individuals' of Whakatōhea and J A Wilson.<sup>428</sup> The rest of these returned lands were returned through the Compensation Court process established for the purpose of returning land to 'loyal' Māori and those defined as 'rebels' under the New Zealand Settlements Act 1863 but who submitted to the authority of the Crown.<sup>429</sup> Many of the large blocks of land returned to Māori covered the mountainous sections of the confiscation area. The compensation process and details about the lands returned to Māori are discussed further in chapter 4 of this report.

Much of the land which was not returned to Māori had a history of fruitful farming and cropping. Whakatōhea relished the flat alluvial planes around Ōpōtiki prior to their confiscation in 1865. According to Ranginui Walker, these lands were fertile and well-suited to cultivation of crops. The lands also featured the capacity to grow 'luxuriant' grass for grazing livestock. Walker states that the lands fertility and suitability for a wide range of crops, orchards, and agriculture were the backbone of Whakatōhea's economic prosperity between the 1840s and 1865.<sup>430</sup> Historian David Alexander also notes that Whakatōhea used wooded areas for gathering food, medicine, and timber.<sup>431</sup>

#### 4.5.3 Land character today

Contemporary land ratings for blocks of Māori land within the confiscation boundary give another sense of the quality and usage of this land. It should be noted that the land and the way it is used has changed significantly since the 1860s. Some land underwent drainage works in the twentieth century to make it more useful for European style cultivation and agriculture.<sup>432</sup> Pākehā settlers likewise engaged in forest clearing to create more areas for farming.<sup>433</sup>

Nevertheless, the quality of the land still held under Māori title in the north-eastern Bay of Plenty provides some insights into the quality of land Māori were left with after raupatu. Much of the

---

<sup>428</sup> Ewan Johnston, 'Wai 203 & 339 Scoping Report', p 25

<sup>429</sup> Buddy Mikaere, 'Exploratory Report to the Waitangi Tribunal an Historical Account of the Confiscation of land in the Opotiki District', (commissioned research report, Wellington: Waitangi Tribunal, 1991), pp 26-27

<sup>430</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 59 & 67

<sup>431</sup> David Alexander, 'Ngā Take Taio: Environmental Issues Relevant to the Historical Relationship Between Whakatōhea Hapū and the Crown', (Wellington: Office of Treaty Settlements, 2017), pp 9-10

<sup>432</sup> Alexander, 'Ngā Take Taio', p 31

<sup>433</sup> Alexander, 'Ngā Take Taio', p 11

returned land was unsuitable for producing food for sustenance or trade. For example, the Ōpape 28 block, comprises 5,266 hectares and is one of the largest blocks remaining in Māori ownership in the area.<sup>434</sup> The block is located in the most eastern area of the confiscation boundary. It is highly mountainous and rugged with 92 per cent of the block recommended as ‘suitable for permanent carbon forests’ with ‘low suitability for grazing, [and] production forestry’. Only two per cent of the block is considered to possess ‘high suitability for grazing, [or] production forestry’.<sup>435</sup>

By contrast, Waioeka Lot 435 is a small block of land which lies within a bend in the Waioeka River near Ōpōtiki Airport on the outskirts of the Ōpōtiki Township. This block has been rated as 100 per cent ‘highly versatile’, with ‘moderately high suitability for arable cropping, high suitability for grazing and production forestry’. The block, despite being less than 58 hectares, is now one of the largest blocks of Māori land on the fertile floodplains near Ōpōtiki.<sup>436</sup>

Clearly, some of this productive land which Whakatōhea cultivated prior to raupatu remained and still remains with Māori as Māori land. The majority of the land in this fertile area, however, was that which was confiscated by the colonial government. Accordingly, it was largely awarded to military settlers or sold, resulting in the alienation of most of the best land from Māori ownership and use.

#### 4.6 Chapter summary

The policy and practice of confiscating land already had deep roots in the British Empire, as well as in the Taranaki and Waikato, before it was implemented in the Bay of Plenty in 1866. The government was keen to confiscate Māori land for a multitude of reasons at this time, including a desire to incapacitate future Māori rebellion, and to obtain more land to be sold for Pākehā settlement and allow the proceeds to repay the colony’s war debts.

By the time confiscation was being implemented in the Bay of Plenty in 1866, a significant amount of legislation regarding confiscation had been passed. The New Zealand Settlements Act 1863 and its later amendments meant that where the Governor perceived Māori to have acted in ‘rebellion’ against the authority of the Crown, those iwi suspected could have their lands confiscated.

The 1865 Peace Proclamation had protected combatants from the district who had partaken in the Waikato and Taranaki Wars from any retributive actions from the Crown. But, at the same time local

---

<sup>434</sup> Alternatively, Maori Land Online describes the block as 5255 hectares, with 5813 owners, Māori Land Online, ‘Block: Opape 28’, <https://www.maorilandonline.govt.nz/gis/title/35641.htm>; accessed 1 May 2020

<sup>435</sup> Te Puni Kokiri, *Visualising Māori Land*, ‘Opape 28’, <https://whenuaviz.landcareresearch.co.nz/parcel/35641>; accessed 27 March 2020

<sup>436</sup> Te Puni Kokiri, *Visualising Māori Land*, ‘Waioeka Lot 435’, <https://whenuaviz.landcareresearch.co.nz/parcel/38434>; accessed 27 March 2020

Māori were left vulnerable to retaliatory actions of real or perceived 'rebellion' in defending themselves, their kin, and property when their territory was occupied by colonial forces – pursuing the suspected murderers of Völkner and Fulloon under martial law.

The declaration of the Bay of Plenty confiscation district on 17 January 1866 and confiscation of all lands within it, rather than just certain parts, made the Bay of Plenty different to previous confiscations in New Zealand. Within months, the New Zealand Settlements Amendment Act 1866 made these actions 'absolutely valid' and incontestable in court, before most Māori were even aware of the extent of their compensation, if any.

How the boundaries of confiscation within the Bay of Plenty District were decided upon was never made explicit by the government. The lands taken, however, exceeded the minimum necessary for achieving the stated purpose of the New Zealand Settlements Act 1863. As was common in other districts, far more land was taken than was necessary to provide for sufficient military settlers to 'protect themselves and to preserve the peace' in the district and this was taken with no real consideration for who was 'loyal' or 'rebel'.<sup>437</sup>

Whakatōhea offered minimal resistance during the occupation and attack by colonial forces, most appear to have simply fled inland. Despite this, all of Whakatōhea was evidently a 'rebel' group with no regard for these distinctions.

The Sim Commission report shows that Whakatōhea lost 29 per cent of the lands they had previously held within the confiscation boundary. Whakatōhea lost more than 143,870 acres and were left with just 347,130 acres.<sup>438</sup> However, they were not the only iwi within the north-eastern Bay of Plenty district who lost lands. Ngāti Awa also lost at least half, if not more, of their lands in the confiscation district. Ngāti Awa were left with just 50,321 acres. Tūhoe too lost some 14,731 acres of land in the district. Whereas Te Arawa, an iwi who had assisted the Crown, was ceded some 87,000 acres in their favour.<sup>439</sup>

Some of the confiscated lands were returned as compensation in the proceeding years, how this was undertaken and what was returned is discussed in the next chapter.

---

<sup>437</sup> New Zealand Settlements Act 1863

<sup>438</sup> W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

<sup>439</sup> W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

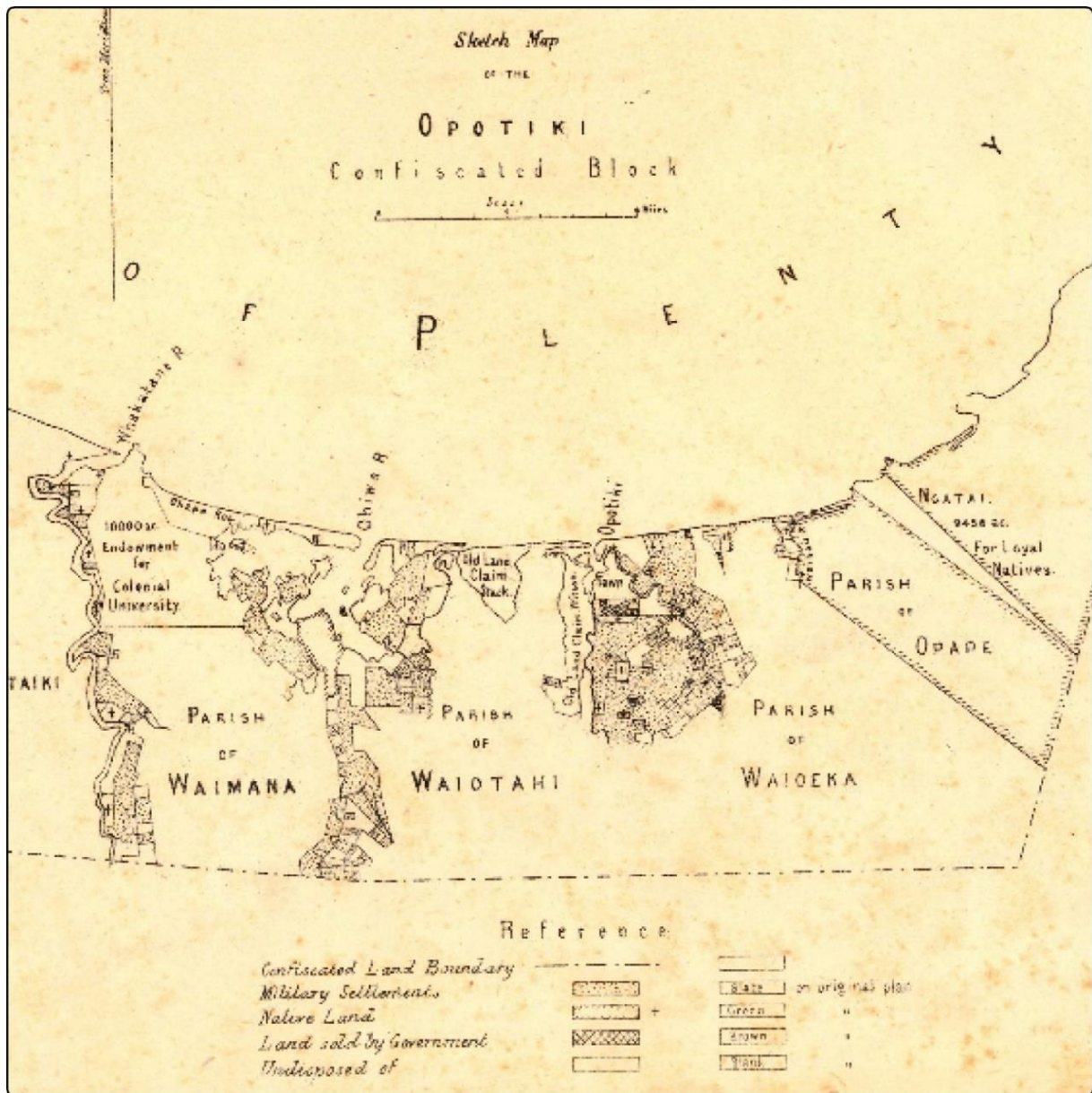


Figure 7: An excerpt from an c.1870 sketch map of the north-eastern Bay of Plenty confiscated lands and intended allocation<sup>440</sup>

<sup>440</sup> AAFV 997 18/ A101 1879, ANZ, Wellington, R22822587

## Chapter Five: Compensation for lands confiscated

### 5.1 Chapter introduction

As discussed in previous chapters of this report, 440,000 acres of Māori land was confiscated across the north-eastern Bay of Plenty without regard to whether its owners were ‘rebel’ or not. However, because the Government recognised that all encompassing removal of Māori land could foment further ‘rebellion’ some effort was made to compensate ‘friendly’ Māori and those ‘rebel’ Māori who surrendered to the Crown. Compensation could be monetary, but generally took the form of reserves of land held in trust (rather than in customary tenure). These reserves could be located anywhere in the proclaimed district.

In the Bay of Plenty district, most of the compensation was allocated through sessions of the Compensation Court or through out-of-court negotiations between Special Commissioner J A Wilson and Māori claimants. As Special Commissioner of the Bay of Plenty district, Wilson was responsible for arranging the surveying of the confiscated lands in the area, as well as determining which of these lands would be retained by the Government, and which would be set aside for military settlers or returned to Māori.

This chapter discusses the compensation issued to Māori in the Bay of Plenty District both through out-of-court settlements or the four sittings of the Compensation Court through 1866 and 1867. The chapter begins with a discussion about J A Wilson, the Crown agent charged with finalising awards of compensation to Māori. The out-of-court compensation process, Wilson’s involvement in arranging the ‘Native Reserves’ and the subsequent reserves themselves are then detailed. This is followed by a discussion of the Compensation Court process, including details of the four separate Court sittings and the awards made by the Court relevant to the Inquiry District.

This chapter relies largely on the surviving communications and reports of Special Commissioner J A Wilson, the minute books of each Compensation Court, the official publications of the New Zealand Government, and the research reports of Cathy Marr, Bryan Gilling, Tom Bennion and Anita Miles.

#### 5.1.1 Who was J A Wilson?

John Alexander Wilson (1829-1909), was the son of CMS missionary John Alexander Wilson (1809-1887) and had been in New Zealand since 1833.<sup>441</sup> Wilson had grown up and farmed in Ōpōtiki, during which time it is likely he became familiar with the Bay of Plenty, local Māori, their language and politics. He later moved to Auckland, where he represented the Pensioner Settlement on the Auckland Provincial Council. Wilson saw active military service with the colonial defence force cavalry as sub-inspector during the Waikato War, and

---

<sup>441</sup> Jinty Rorke, ‘Wilson, John Alexander’, *Dictionary of New Zealand Biography* (Wellington: Allen & Unwin, 1993)

self-funded the No. 2 Company of the 3rd Regiment of the Waikato Militia, of which he served as captain for a time.<sup>442</sup>

Between 1866 to 1868, the period of most relevance to this report, Wilson served as Special Commissioner in the Bay of Plenty. The special commissioner role required Wilson to arrange the survey of lands, set aside sufficient lands for military settlement, and undertake private negotiations with iwi and Māori individuals regarding Crown grants of lands in the confiscated district on behalf of the Government. During this time, he was also the Crown Agent, representing the Crown's interests, for the Bay of Plenty Compensation Court sittings.<sup>443</sup>

Later, from 1873 to 1876, he served as Land Purchase Officer for the East Coast and Bay of Plenty, during which time he purchased Whakaari (White) Island which he invested in as an industrial sulphur mine.<sup>444</sup> During his time in this role Wilson's judgement and methods when acquiring Māori land for the Crown were officially questioned and inquired into.<sup>445</sup> Wilson also served as a Native Land Court Judge (intermittently from 1878 to 1901) and Commissioner in Tauranga (1878-1881).<sup>446</sup>

## 5.2 Legislative authority for compensation

This section discusses some of the key legislation which guided the land compensation process in the Bay of Plenty district through the late 1860s.

Under the New Zealand Settlements Act 1863, compensation could be awarded to all those eligible with an interest in the confiscated lands. However, the legislation specifically excluded anyone who had taken up arms against the Crown since 1 January 1863, or supported in anyway those who had, unless they relinquished their arms and submitted to a trial and the authority of the Crown when requested.<sup>447</sup>

---

<sup>442</sup> Rorke, 'Wilson, John Alexander'

<sup>443</sup> Rorke, 'Wilson, John Alexander'

<sup>444</sup> Rorke, 'Wilson, John Alexander'

<sup>445</sup> J A Wilson, 'Report from Mr J A Wilson, Land Purchase Officer, Poverty Bay, and Correspondence relating Thereto', 6 June 1867, AJHR, 1877, G-5, pp 1-14; J A Wilson, 'Petition of John Alexander Wilson', 9 August 1877, AJHR, J-2, p 1; and T Kelly, 'Public Petitions Committee: Report on Petition of J A Wilson, together with Minutes of Evidence and Appendix', 21 August 1882, AHJR, 1882, I-1C. The original minutes and papers of the hearing into Wilson's allegations about Rogan and Rogan's counter-charges are in Archives New Zealand in the MA series 11 special files 112 and 131; Tony Nightingale, 'The Commissioners of Tauranga Lands 1868-1886', (commissioned research report, Wellington: Waitangi Tribunal, 1996), p 8

<sup>446</sup> Rorke, 'Wilson, John Alexander'

<sup>447</sup> New Zealand Settlements Act 1863, sections 5 and 6



All claims for compensation were to be sent by claimants to the Colonial Secretary, who would send the claim on to the Compensation Court judge.<sup>448</sup> The Act provided for the establishment of Compensation Courts and the appointment of judges in confiscated districts to decide the outcome of these compensation claims.<sup>449</sup>

In 1864, the New Zealand Settlements Amendment Act of that year was passed, which (as discussed in chapter 4 of this report) restricted the duration of the 1863 Act to 3 December 1865.<sup>450</sup> The 1864 amendment also allowed the Governor in Council to award compensation or additional compensation to claimants previously refused or awarded inadequate awards by the Compensation Court.<sup>451</sup>

In 1865, the New Zealand Settlements Amendment and Continuance Act was passed. This amendment clarified that the Compensation Court had always had the authority to determine whether claimants had committed any of the offences which excluded them from eligibility for compensation under section 5 of the original 1863 Act.<sup>452</sup> The amendment specified that the Colonial Secretary and Compensation Court, in agreement with claimants, could choose to award land as compensation.<sup>453</sup>

Further, the 1865 Amendment Act reduced the required timeframe in which cases for compensation were allowed to be submitted to a minimum period of 3 months and maximum period of 6 months following the land confiscation proclamation. This meant that the Compensation Court had to wait until at least 6 months had passed from the advertisement of the revised confiscation boundary before adjudicating claims in that area. Claims for compensation brought to the Colonial Secretary after this period but within 12 months of the confiscation proclamation could now also be referred to Court where the Colonial Secretary saw fit.<sup>454</sup>

The New Zealand Settlements Acts Amendment Act 1866 was passed in early October of that year. The amendment retrospectively validated all those decisions and awards that the Compensation Courts had and would make, as well as all the orders, proclamations and regulations made by the Governor in relation to the New Zealand Settlements Acts.<sup>455</sup> Although the Compensation Courts were yet to sit in the Bay of Plenty at this time, all future decisions would be 'absolutely valid'.

The Friendly Natives' Contracts Confirmation Act 1866, also passed in October, validated all Crown Grants to 'friendly Natives' made under the New Zealand Settlements Act 1863.

---

<sup>448</sup> New Zealand Settlements Act 1863, section 13

<sup>449</sup> New Zealand Settlements Act 1863, sections 8 and 9

<sup>450</sup> New Zealand Settlements Amendment Act 1864, section 3

<sup>451</sup> New Zealand Settlements Amendment Act 1864, section 2

<sup>452</sup> New Zealand Settlements Amendment and Continuance Act 1865, section 7

<sup>453</sup> New Zealand Settlements Amendment and Continuance Act 1865, sections 9 and 10

<sup>454</sup> New Zealand Settlements Amendment and Continuance Act 1865, section 11

<sup>455</sup> New Zealand Settlements Acts Amendment Act 1866, section 6

Besides the New Zealand Settlements Act 1863 and amendments, the principal legislation under which Māori were awarded lands from confiscated blocks was the Confiscated Lands Act 1867. Passed in October 1867, this Act allowed the Governor to create reserves on the land confiscated under the New Zealand Settlement Acts and issue confiscated land as compensation outside of or in addition to the Compensation Court process.<sup>456</sup> These reserves of land could be issued to either ‘friendly Natives’, ‘surrendered rebels’, or dedicated to schools or other educational institutions for Māori or the general population.<sup>457</sup> Under the Act the Governor could also introduce specific conditions, restrictions or limitations on the awards provided.<sup>458</sup> Alternatively, the Governor could also declare confiscated land to be subject to the Waste Land legislation of the province in which it was located.<sup>459</sup>

### 5.3 Private compensation negotiations

This section focuses on the compensation negotiations undertaken in private by Special Commissioner J A Wilson with Māori in the Bay of Plenty confiscation district.

#### 5.3.1 What were the negotiations?

Special Commissioner J A Wilson began making arrangements for out-of-court settlements in early 1866 and continued making arrangements during the Bay of Plenty district Compensation Court sittings in 1867. Wilson reported to Daniel Pollen, the Deputy Superintendent of Auckland Province, under which the authority over the Bay of Plenty’s confiscated lands fell.<sup>460</sup>

The special commissioner role required Wilson to undertake private negotiations with iwi and individuals regarding the ceding of their land and the issuing of Crown grants of lands in the confiscated district on behalf of the Government. How much sway hapū and iwi leaders held during these ‘negotiations’ is unclear from the surviving record. Both ‘friendly’ and ‘rebel’ Māori were eligible for these Crown grants, as long as they ‘understand they are living under the laws of the Queen’.<sup>461</sup> Wilson was charged in September 1865 with ensuring the awards did not exceed:

... their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more valuable, and the settlement and occupation of the country will be effected.<sup>462</sup>

---

<sup>456</sup> Confiscated Lands Act 1867, section 2

<sup>457</sup> Confiscated Lands Act 1867, sections 3, 4 and 7

<sup>458</sup> Confiscated Lands Act 1867, section 6

<sup>459</sup> Confiscated Lands Act 1867, section 8

<sup>460</sup> Bennion & Miles, ‘Ngati Awa and Other Claims’, p 75

<sup>461</sup> Fitzgerald to Pollen, 3 September 1865, ACFL 8170 A1628 2 / y 3 September 1865, ANZ, Wellington

<sup>462</sup> Fitzgerald to Pollen, 3 September 1865, ACFL 8170 A1628 2 / y 3 September 1865, ANZ, Wellington

The authorities' assumption being that 'permanent pacification' would occur once Māori:

finally accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant... to induce the Natives to accept their position as final and irrecoverable.<sup>463</sup>

To encourage this preferred outcome Wilson was instructed by Fitzgerald to be more 'liberal' in his negotiations than 'would on other considerations be desirable'.<sup>464</sup>

Negotiations between Wilson and different rangatira across the Bay of Plenty resulted in the 'ceding' of most of their land to the Government and the allocation of the remainder in reserves of land for specific iwi and hapū groups.

As discussed earlier in this report, a June 1867 memorandum from Wilson shows that of the original 440,000 acres of confiscated land, 87,000 acres had been awarded to Te Arawa for their assistance in the arrest of Fulloon's killers: a 57,000-acre block east of Ōpape had technically been 'abandoned' by the Government in an area where the confiscation had failed to be enforced; 96,000 acres had been awarded back to the 'rebels'; 5,442 acres had been awarded to claimants or abandoned; 38,000 acres remained to be arranged and 151,558 acres was retained by the Government. About half of these 151,558 acres were provided as sections for military settlers.<sup>465</sup>

### 5.3.2 Limited sources

Records concerning J A Wilson's meetings with hapū and iwi leaders during these private negotiations in the Bay of Plenty through 1866 and 1867 are limited. This means there is little clarity around how decisions were made regarding the size, character or location of the reserves issued to different hapū or iwi.

Wilson did, however, provide reports in May and November 1866 and in April 1867 regarding his experiences and progress in the Bay of Plenty district assessing the land and negotiating reserves with some rangatira.<sup>466</sup> Key aspects of the reports are provided below. In addition, the reserves awarded to Bay of Plenty Māori by Wilson through this process and the Ōpōtiki Compensation Court were included in his report of June 1867 and are discussed below.<sup>467</sup>

---

<sup>463</sup> Fitzgerald to Pollen, 3 September 1865, ACFL 8170 A1628 2 / y 3 September 1865, ANZ, Wellington

<sup>464</sup> Fitzgerald to Pollen, 3 September 1865, ACFL 8170 A1628 2 / y 3 September 1865, ANZ, Wellington

<sup>465</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, p 2

<sup>466</sup> J A Wilson, Special Commissioner & Crown Agent at Opotiki, to Dr Pollen, Agent for General Government, Auckland, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington; J A Wilson, to Auckland Superintendent in 1 May 1866, RDB, vol 133, pp 51036-51037; Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>467</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, pp 1-4

### 5.3.3 Wilson's activities in negotiating out-of-court compensation

Wilson arrived in the Bay of Plenty a few weeks after the confiscation district was proclaimed by an Order in Council on 17 January 1866 under the New Zealand Settlements Act 1863.<sup>468</sup> As discussed in previous chapters of this report, this was a time of ongoing, sporadic, guerrilla-type attacks from Pai Mārire adherents in the Bay of Plenty region. This conflict cast a shadow over Wilson's negotiations and at different times hampered communication, travel, and surveying efforts around the rohe. The Government was anxious for surveying to get underway so that military settlement could begin as soon as possible.<sup>469</sup> The Government's priority was to survey and establish lands for military settlement before arranging reserves for 'friendly Natives' and then for 'surrendered rebels'.<sup>470</sup> Michael Allen suggests that by resettling Māori in allocated areas like the Ōpape Reserve, Wilson hoped to secure the most desirable areas in the north-eastern Bay of Plenty for military settlement.<sup>471</sup>

On his way to Ōpōtiki from Auckland in early 1866, Wilson collected from Clark (presumably Resident Magistrate of Tauranga, Henry T Clarke) in Tauranga the compensation claims made by Māori up to that date. This comprised 100 claims for land at Ōpōtiki and Ōhiwa from a total of 38 different Māori claimants.<sup>472</sup> It was, at least initially, these claims which Wilson began to privately negotiate compensation for.

#### 5.3.3.1 *Arranging military settlements*

During his first few months in the Bay of Plenty, Wilson made arrangements for the Ōpōtiki township to be surveyed and laid out, as well as the survey of military settlements at Ōpōtiki, Ōhiwa, and Waimana. Arrangements for a settlement at Whakatāne were also made later.<sup>473</sup> In 1873, reports showed that the total lands allocated to military settlers would be 23,461 acres, including those settlements at Ōpōtiki, Ōhiwa, and Whakatāne.<sup>474</sup> As early as November 1866, Wilson had known that the number of lots he had been allocating for military settlement exceeded what was needed for the number of military settlers, but he continued his

---

<sup>468</sup> Allen, 'An Illusory Power?', p 139

<sup>469</sup> Whitaker to Auckland Provincial Government, 1866, Auckland Provincial Council Votes and Proceedings, 1866-1867, A1, p 14; Stafford to Superintendent Auckland Province, 24 February 1866, Auckland Provincial Council Votes and proceedings, 1866-1867, A1, pp 3-4

<sup>470</sup> Whitaker to Auckland Provincial Government, 1866, Auckland Provincial Council Votes and Proceedings, 1866-1867, A1, p 14

<sup>471</sup> Allen, 'An Illusory Power?', pp 138-139

<sup>472</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>473</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 80

<sup>474</sup> J H H St John, 'Further Papers Relative to Confiscated Lands', 12 August 1873, AJHR, 1873, C-4B, pp 5-6; J A Wilson, Special Commissioner & Crown Agent at Opotiki, to Dr Pollen, Agent for General Government, Auckland, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

work.<sup>475</sup> As mentioned above, some of the excess lots within the military settlements would later become available to Māori claimants through the Compensation Court.<sup>476</sup>

The map in Figure 8 below depicts the lands confiscated and allocated to military and European settlement by Wilson. It clearly shows their predominance over the flatter fertile valley lands shown in white.

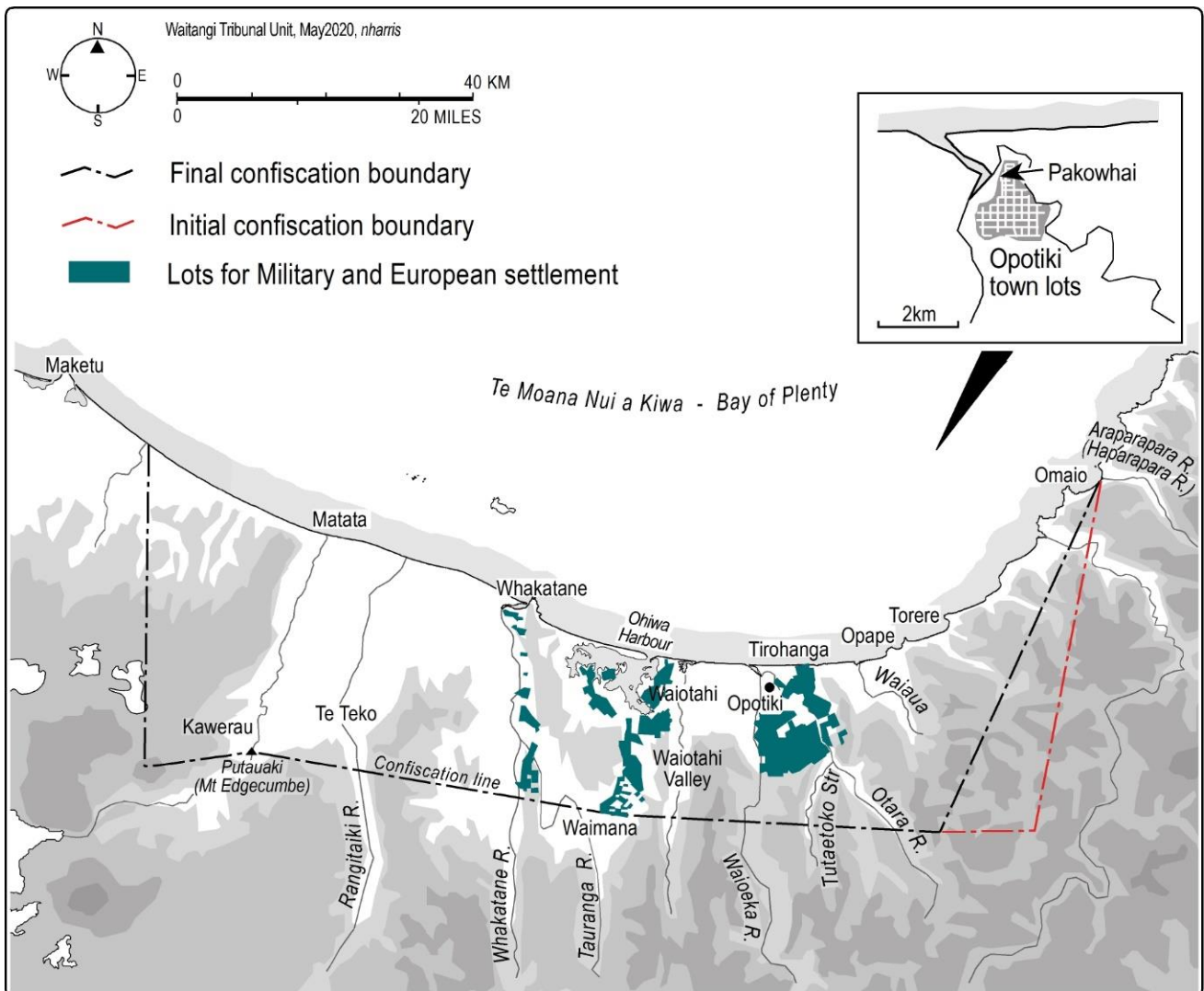


Figure 8: A map of entire confiscated area in north-eastern Bay of Plenty and the lands allocated for military and European settlements<sup>477</sup>

### 5.3.3.2 Wilson's 1866 Census of Whakatōhea

At some point in 1866, Wilson undertook a census of Whakatōhea living in the Bay of Plenty confiscation district. How Wilson chose to undertake this census is not revealed. The census is provided here to show the

<sup>475</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>476</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>477</sup> New Zealand Gazette, 18 January 1866, no 3, p 17; New Zealand Gazette, 27 September 1866, no 52, p 364; Maori Land Information Office map, MA 85/7/11, Noel Harris Collection

numbers of Whakatōhea and Ūpokorehe affected by land confiscation and those who ‘surrendered’ and were eligible for compensation. The table shows that across six hapū there were 531 Māori considered to be of Whakatōhea by Wilson. Of those considered Whakatōhea, 411 (77 per cent) had surrendered by this time. The list does not name Ngāti Patu, whether they were excluded entirely or included under Ngāti Ngahere is not clear. Meanwhile, only 40 per cent of Ngāti Ira who numbered 85 at the time had surrendered.

Figure 9: Return of Whakatohea tribe from Mr J A Wilson’s census 1866 showing numbers of surrendered & unsundered men, women & children <sup>478</sup>

Hapu	Surrendered men	Surrendered women	Surrendered children	Total women	Total children	Total men	Total hapu	Total hapu Surrendered
Ngaitira	15	14	5	33	17	35	85	34 (40%)
Ngatirua	56	54	36	59	37	72	168	146 (87%)
Ngatingahere / Naitinahere	27	22	18	29	25	35	89	67 (75%)
Ngaitamahaua / Ngaitama	35	34	38	41	39	42	122	107 (88%)
Te Upokorehe	15	15	10	17	10	23	50	40 (80%)
Hiwerakua- Apokorohita	6	5	6	5	6	6	17	17 (100%)
<b>Totals</b>	<b>154</b>	<b>144</b>	<b>113</b>	<b>184</b>	<b>134</b>	<b>213</b>	<b>531</b>	<b>411 (77%)</b>

What is not clear from Wilson’s census is whether the figures of those who had not surrendered were those considered to still be in ‘rebellion’. It is certainly possible the 120 unaccounted-for Ngāti Ira, and others, were those who remained at large, hidden in the bush. It appears that only those 411 Māori who were deemed to be ‘surrendered rebels’, were given access to the Ōpape Reserve. This was still more than double the number of Ngāti Rua who had previously occupied the same lands.

No evidence was sighted in the course of research conducted for this report of anyone seeking access to lands at Ōpape being rejected, during this period. However, Ranapia Waihuka testified in the Native Land Court in 1895 that ‘outsiders’ who had not partaken in ‘rebellion’ and those who had already received Crown grants ‘were not to participate in these Blocks’.<sup>479</sup> This suggests that it was known or at least accepted by Whakatōhea that the lands were not to be occupied by all of the iwi.

<sup>478</sup> Adapted from Return of Whakatohea Tribe from J A Wilson’s Census 1866 Showing Numbers of Surrendered and Unsundered Men, Women, and Children (typescript copy) in RDB, vol 123, p 47386

<sup>479</sup> Ranapia Waihuka sworn evidence in 1895 Native land Court, quoted in H S King to Under Secretary, Native Department, 15 June 1915 in RDB, vol 3, p 1182

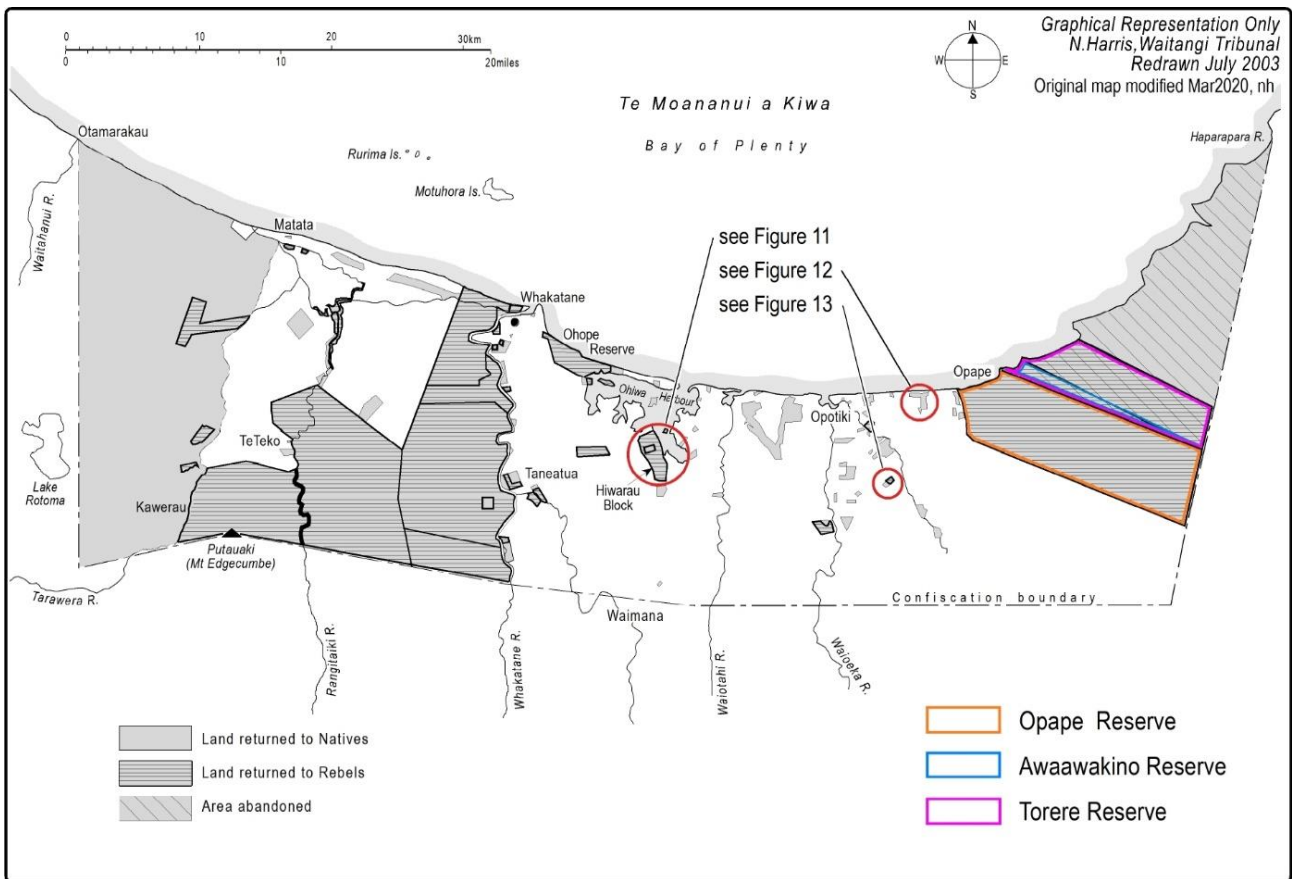


Figure 10: Area confiscated and lands returned as reserves through Wilson's arrangements in north-eastern Bay of Plenty<sup>480</sup>

### 5.3.3.3 Ōpape Reserve (20,290 acres)

As indicated above, there is little extant record of Wilson's activities in the Bay of Plenty through 1866. However, it is known that negotiations began almost immediately for the return through compensation of lands around Ōpape. Claims for the lands around Ōpape from Ngāitai rangatira Wiremu Kīngi (William King) led to an organised meeting between Wilson, Kīngi, and several other Ngāitai rangatira and Whakatōhea rangatira Rangimatanuku and Witiria, among others. Wilson noted the meeting 'convinced me more than ever of the weakness of Ngāitai's claim to Opape', leading Wilson to reserve the lands solely for the 'surrendered rebels' of Whakatōhea.<sup>481</sup>

Subsequently, in April 1866 under the instruction of Whitaker (the Attorney General and Superintendent of Auckland Province), Wilson organised the reserve at Ōpape to be set aside for the 'surrendered rebels' of Whakatōhea. Regarding this, Wilson later noted:

<sup>480</sup> New Zealand Gazette, 27 September 1866, no 52, p 364; Maori Land Information Office, MA 85/7/11, Noel Harris Collection; Waitangi Tribunal, The Ngati Awa Raupatu Report, p 67

<sup>481</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

I made the Opape Reserve for the Whakatohea tribe of surrendered rebels about 18<sup>th</sup> April 1866 and I immediately moved the said tribe from the Opotiki Valley and located it at Opape.<sup>482</sup>

Providing evidence to the Ōpōtiki Native Land Court in 1895 regarding the relocation to Ōpape, Ranapia Waihuka, a rangatira of Ngāi Tama, stated:

At the conclusion of the war [1865/1866 hostilities in Opotiki] the Government invited us to come out from our hiding places.

I gave my consent to my people coming out here to Opotiki. The persons who addressed the Government were myself, Apanui and Reweri Matanuku – all of the hapus of Whakatohea collected at Opotiki. Lands were parcelled out at Opape to the various hapus of Whakatohea – pieces of land were given to the rebels of Ngati Patu, Ngati Rua, Ngati Tama, Ngati Ngahere and Upokorehe.<sup>483</sup>

Research for this report has uncovered very little other contemporary evidence regarding the relocation process for ‘surrendered’ Whakatōhea to the lands at Ōpape. It is possible that a close analysis of the minute books of the Ōpōtiki Native Land Court (which did not sit until at least a decade later) and petitions to parliament may offer further information. However, one article in the *Daily Southern Cross* established that at least some Whakatōhea had moved on to lands at Ōpape by 17 May 1886:

The Makatohea [Whakatohea] natives are preparing their land (allotted to them by the Government at Opape) for cultivation, and carrying on fishing operations. They are finding a ready market for their surplus fish among the officers and men of the expeditionary force here, and appear contented.<sup>484</sup>

The Ōpape Reserve was a narrow strip of land running inland from the coast and located in the north-east portion of the Inquiry District at the eastern edge of Whakatōhea’s tribal boundary. The reserve was 20,290 acres in size.<sup>485</sup> The land quality was later rated as ‘at best... second-class land’ by the Native Land Commission in 1908.<sup>486</sup> The reserve was established on the traditional lands of Ngāti Rua but was intended to serve all ‘surrendered’ Whakatōhea.<sup>487</sup> In this respect it was unlike the reserves Wilson would negotiate elsewhere in the district which were specified as both for ‘surrendered rebels’ and ‘loyal Natives’.

---

<sup>482</sup> J A Wilson quoted in H S King, Registrar to Under Secretary, Native Department, 15 June 1915 in RDB, vol 3, pp 1181-1182

<sup>483</sup> Ranapia Waihuka sworn evidence in 1895 Native land Court, quoted in H.S. King to Under Secretary, Native Department, 15 June 1915 in RDB, vol 3, p 1182

<sup>484</sup> ‘Opotiki’, *Daily Southern Cross*, 22 May 1866, p 4

<sup>485</sup> The 20,290 acres was later revised to 20,787, in J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, p 3; Charles Heaphy, ‘Schedule of Native Reserves in the Province of Auckland’, 19 July 1871, AJHR, 1871, F-4, p 31

<sup>486</sup> Robert Stout and A T Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Land in the County of Opotiki’, 17 June 1907, AJHR, 1908, G-1M, p 1

<sup>487</sup> Robert Stout and A T Ngata, ‘Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Land in the County of Opotiki’, 17 June 1907, AJHR, 1908, G-1M, p 1



The question of how the Ōpape Reserve would be distributed or shared between those eligible hapū of Whakatōhea was not addressed by the Government until 1879. Registrar to the Under Secretary of the Native Department, H S King, concluded in 1915 that Wilson had made no distinction between the various hapū of Whakatōhea for either confiscation of lands or the award of the Ōpape Reserve.<sup>488</sup> Historians Ranginui Walker and Bryan Gilling have both provided some commentary around this process, but as this falls outside the relevant time period of this report it is not discussed further here.<sup>489</sup>

#### 5.3.3.4 *Negotiation of reserves in late 1866 to early 1867*

The extent of reserves and compensation negotiated by Wilson prior to leaving the area in May 1866 is unclear. When he returned to the Bay of Plenty in mid-November 1866, Wilson found that private negotiations were much more difficult to progress than they had been earlier in the year. Particularly, he reported difficulties progressing the Ōpōtiki claims, which he had hoped to settle out-of-court:

Finding myself... unable to settle claims privately in consequence of the absence of the bulk of the claimants, and the stubbornness of the few that are here I have set aside reserves in the Military and Commercial Townships.<sup>490</sup>

The absence of most of the Māori claimants from the area during Wilson's attempts at private negotiations would result in more claims being heard in the Compensation Courts than Wilson desired. His inability to complete private negotiations with these Māori saw him set aside 'sufficient provision' of lands in the military and commercial townships for future allocation to those Māori who would become successful claimants.<sup>491</sup> This also shows that these lands principally intended for Pākehā settlement were surveyed earlier than those lands intended for award to Māori.<sup>492</sup>

By mid-November 1866, Wilson believed he had allocated sufficient provision of lands for reserves in Ōpōtiki. Wilson also believed he had set enough land aside for all of the registered claims that might be issued awards by the Compensation Court.<sup>493</sup> Wilson was wrong, as a number of further claims were received after the cut-off of 1 December 1866. On this date, under the Act, it became optional for the Government to accept new claims. It appears the Government continued to accept these claims, as most still went on to be heard by the Compensation Court.<sup>494</sup> The resulting complications as Wilson attempted to find suitable lands for these successful claims over and above that already set aside is discussed below.

---

<sup>488</sup> H S King, Registrar to Under Secretary, Native Department, 15 June 1915 in RDB, vol 3, pp 1181-1182

<sup>489</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, pp 134-137,152-153; Gilling, 'Te Raupatu O Te Whakatohea', p 156

<sup>490</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>491</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>492</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>493</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>494</sup> Wilson to Dr Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

In early December 1866, Wilson managed to negotiate a reserve of the lands at Hiwarau (1,073 acres) and Hokianga Island (13 acres, 2 roods, 12 perches) in Ōhiwa Harbour (just outside the western boundary of the Inquiry District) for the 'Loyal Natives and Returned Rebels' of Ūpokorehe.<sup>495</sup> In his later reports, Wilson noted that Defence Minister Colonel Haultain was present during these arrangements and approved of the Ōhiwa settlements.<sup>496</sup> Hiwarau and Hokianga Island can be seen in Figure 10 above, and Figure 11 and 12 below.



Figure 11: Hokianga Island and Hiwarau were reserved for Ūpokorehe<sup>497</sup>

It is clear from his 1866 Whakatōhea census (presented above) that Wilson considered Ūpokorehe to be a hapū of Whakatōhea. Subsequently, Ūpokorehe were one of the groups given access to the Ōpape Reserve.<sup>498</sup> After confiscation, Ūpokorehe were left with little of their original land base within the Inquiry District. Walker notes that the reserves at Hiwarau and Hokianga Island secured an area important to Ūpokorehe for its connections to Tairongo, a significant ancestor.<sup>499</sup>

By 8 January 1867, Wilson had travelled on to Whakatāne where he remained until 13 January investigating claims. From Whakatāne, Wilson went inland to Kōkōhinau, the pā of 'loyal chief' Rangi Te Rangitukehu (Ngāti Awa) in Te Teko (south-west of Whakatāne). On 15 January, a meeting of local Māori took place at the Kokohinau Pā, in which Wilson announced his intention to acquire a portion of land 'in consideration of the

<sup>495</sup> Wilson to Dr Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>496</sup> Wilson to Dr Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>497</sup> A Sinclair, Map of Country and town lots in Opotiki, Whakatane to Waipono Rivers - Lots, military, native blocks, 1868 in AAFV 997 17 / A47, ANZ, Wellington

<sup>498</sup> Ranapia Waihuka sworn evidence in 1895 Native land Court, quoted in H.S. King to Under Secretary, Native Department, 15 June 1915 in RDB, vol 3, p 1182

<sup>499</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 128

expense incurred by Government through the late disloyalty of some Natives of the District'.<sup>500</sup> This is likely to be a reference to a negotiated 'ceding' of iwi lands rather than an outright purchase. Details of the negotiations were not provided in the sources, but Wilson's eagerness to procure land even from 'loyal' rangatira should be noted.

The next day, Wilson submitted Putauaki (Mt Edgecumbe) to obtain a better understanding of the lay of the surrounding lands. Wilson was 'struck with the level of character of the country extending from Te Teko on the Rangitaiki River to Lake Tekapo', and became 'determined to obtain from Tukehu [Rangi Te Rangitukehu] the [Te] Teko plain, which appears to be the natural site for a town that must some day command the traffic of the interior'.<sup>501</sup> Later in January when Wilson was in Tauranga, he broached the issue with Colonel Haultain, who advised that the locals should not be pressed for the land 'should the subject seem unwelcome', but at the same time Wilson should not 'appear to suffer the matter to lapse'.<sup>502</sup> Wilson was later successful in convincing Rangi Te Rangitukehu to 'cede' some of this land.<sup>503</sup>

On 17 January 1867, Wilson visited the hapū of Te Tāwera (Ngāti Awa). Much of Te Tāwera's land had been confiscated following their 'rebellion', most of which was later arranged to be given to Te Arawa by Wilson and the Compensation Court. Wilson wrote to Pollen in April 1867 agreeing with the recommendations of Clarke and Mackay to award Te Tāwera lands at Te Umuhika (outside of Inquiry District, near Matatā), where they held a mill.<sup>504</sup> Wilson also pursued this with Commissioner Clarke in the weeks following, although Clarke was too busy to act.<sup>505</sup> Instead, the reserve was processed later and gazetted under Schedule 1 in 1872.<sup>506</sup>

The numbered schedules which appeared in the AJHR between 1867 and 1874 and the *New Zealand Gazette* in 1874 contained details, including the size and location of lands, of compensation awarded to claimants.

By 21 January 1867, Wilson had returned to Ōpōtiki. Once there he arranged for Major St John, Te Ranapia, Wīteria Tawhi Moka, and Rewiri Moka (who were all of Whakatōhea) to travel into the 'Waioeka mountains', near the source of the Waioeka River to meet expatriated Pai Mārire adherents of Whakatōhea in an effort to encourage their surrender and join their kin at the reserve established in Ōpape.<sup>507</sup>

After a short trip to Tauranga on 25 January, Wilson returned to Ōpōtiki again on 29 January 1867 where he was informed through correspondence with a number of rangatira, including Wiremu Kīngi (Nga Tai), Rakuraku ('Uriwera' or Tūhoe), Kaperiere (Whakatāne), Hohaia Matatehokia (a Whakatāne native assessor), Apanui

---

<sup>500</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>501</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>502</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>503</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>504</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>505</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>506</sup> J A Wilson, 'Bay of Plenty District – Schedule of No. 1, 1872', 29 March 1872, AJHR, 1872, C-4, p 8

<sup>507</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

Wepiha (Ngāti Awa), and Te Keepa (Ngāti Awa) from the wider district, that an attack on Ōpōtiki should be expected from the 'Uriwera'.<sup>508</sup> With this news, the Ōpōtiki garrison was reinforced with the arrival of Colonel Haultain and 75 men. Wilson was directed not to leave the compound and his work was subsequently restricted until the imminent danger was known to have passed on 14 February. Wilson then continued his investigations visiting Whakatāne, Rangitaiki, Putauaki (Mt Edgecumbe), and Matatā. This was the period before the Compensation Court sat at Ōpōtiki.<sup>509</sup>

Although he only makes passing mention of it in his reports, it is likely that the ongoing unrest in the Bay of Plenty (especially during the late January to early February period of 1867) restricted Wilson's activities in the region.<sup>510</sup> From Wilson's April 1867 report, it is clear he was able to continue some work around Ōpōtiki, in the vicinity of the garrison, where he appears to have often based himself. But, there is little mention of his activities elsewhere in the Inquiry District such as in the interior or eastern portion.

As discussed in his April report, most of Wilson's time prior to early 1867 appears to have been spent outside the Inquiry District in the more western part of the Bay of Plenty in places like Rangitaiki, Matatā, Putauaki (Mt Edgecumbe), Ōhiwa, and Whakatāne. Accordingly, most of the reserves privately negotiated for out-of-court compensation are outside of the North-Eastern Bay of Plenty Inquiry District.

For instance, on 18 February 1867, Wilson provided the Ngāti Hokopū and Ngāti Wharepaia hapū of Ngāti Awa permission to retain reserves of land at Orini and Ōhope (outside of the Inquiry District).<sup>511</sup> The award became the Ōhope Reserve and was specified to be an award to the 'hapus [of which] Apanui, Wepiha, and Kepa Toihau are the Chiefs'.<sup>512</sup>

Several months later, Wilson awarded a reserve for Whakatōhea around Ōpōtiki (inside the Inquiry District). This comprised 6 acres between the Otara River and Parahamuti Creek and the sand hills. Wilson recorded that this piece of land was requested by Whakatōhea as a place where they might reside when visiting Ōpōtiki.<sup>513</sup> This appears to have been separate to the additional arrangement by Wilson of 50-acre allotments for five Whakatōhea rangatira within the East Opotiki Survey. Research for this report has been unable to identify the 6 acre reserve in the schedules of awards, which are discussed below.

The five rangatira each provided with 50 acre lots in Tirohanga included Witiria, Reweri Te Rangimātānuku, Awanui, Rānapia Te Ūatahi, and Piri Te Makarīni. These lots can be seen in Figure 10 above and Figure 12

---

<sup>508</sup> Threats of attack by Pai Mārire adherents are also discussed in previous chapters; Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>509</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>510</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>511</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>512</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, pp 1-6

<sup>513</sup> Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

below. Each would have the titles to their sections formalised upon maintaining loyalty to the Crown until 1 January 1870 (Rānapia Te Ūatahi was also awarded an additional 50-acre lot in the Ōpōtiki Valley without such conditions. This award is depicted in Figure 10 and Figure 13).<sup>514</sup> The Confiscated Lands Act 1867, which under section 6 allowed such conditions to be attached to awards, did not pass until October 1867. Therefore, it is unclear what legislative authority Wilson was acting under prior to the retrospective authority provided by the New Zealand Settlements Acts Amendment Act 1866 and the aforementioned 1867 Act. Neither does Wilson specify any authority for this exception in his correspondence to his superiors. Historian Ranginui Walker has suggested that these awards to influential rangatira of Whakatōhea were an attempt by Wilson to ‘mollify’ the rangatira and ease the extensive confiscation of lands from their hapū.<sup>515</sup>

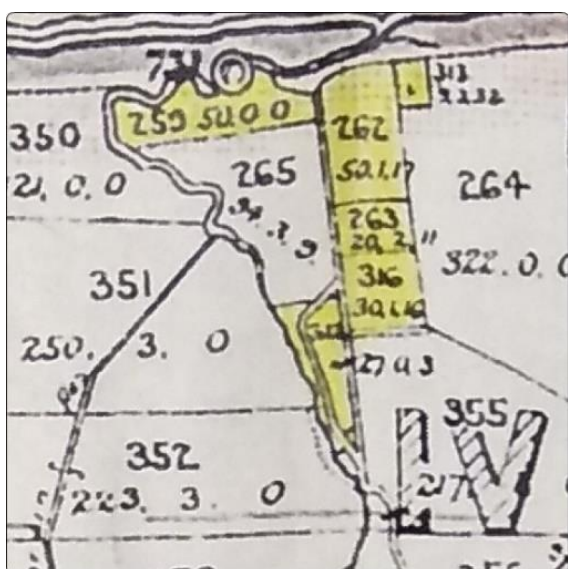


Figure 12: Lands reserved for five rangatira in Tirohanga<sup>516</sup>



Figure 13: Lands reserved for Rānapia Te Ūatahi in Ōpōtiki<sup>517</sup>

### 5.3.3.5 Ongoing private negotiations

Wilson continued to negotiate further out-of-court awards after the Ōpōtiki Compensation Court sat over March and April 1867. Tiwai and Te Aira (Whakatōhea), who had previously insisted on being heard by the Court, accepted an out-of-court offer from Wilson.<sup>518</sup> Instead of taking their 10 claims to be heard by the Court, they settled on 250 acres of country land (including 25-acre sections in both Ōhiwa and Waiaua), 5 acres in

<sup>514</sup> This date is given as three years from 1 December 1866 in Wilson’s letter, but as 1 January 1870 in the 1867 AJHR. J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, pp 1-6; Wilson to Dr Pollen, Agent 26 April 1867, in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>515</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 127

<sup>516</sup> Maori Land Information Office, MA 85/7/11, Noel Harris Collection

<sup>517</sup> Maori Land Information Office, MA 85/7/11, Noel Harris Collection

<sup>518</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

the military township, 1  $\frac{3}{4}$  acres in the civil township, and £50.<sup>519</sup> Other claimants who appeared in the Compensation Court also continued private negotiations with Wilson which resulted in out-of-court awards of land. Those relevant to the Inquiry District are included in the schedules below. Those who benefitted from these privately negotiated out-of-court compensation settlements were largely ‘surrendered rebels’ who were otherwise excluded from the Compensation Court process. There were, however, some exceptions to this rule. The arranged reserves all appeared in Wilson’s report to the Civil Commissioner’s Office in June 1867 following the sitting of the Ōpōtiki Compensation Court.<sup>520</sup> A total of seven reserves were included in the report distributed among Whakatōhea, Te Ūpokorehe, and Ngāti Awa, with an additional award given to Te Arawa. The specified boundaries for these awards are provided in an appendix to this report.

Only three of these reserves were awarded within the Inquiry District. These were the Ōpape Reserve, and the awards to Rānapia Te Ūatahi, and five Whakatōhea rangatira (which again included Rānapia Te Ūatahi), totalling approximately 20,600 acres. The award of Hokianga Island and Hiwarau to Te Ūpokorehe sits within Ōhiwa Harbour and is outside of the Inquiry District. Hokianga Island and Hiwarau total approximately 1,087 acres.

The Native reserves in the Bay of Plenty district at this time were all issued with the Government’s reserved right to reclaim land to ‘lay out roads’. The ongoing impact of the Government’s reserved right and practice of taking land for roads from the Native reserves within the Inquiry District is outside of the scope of this report.

Where Wilson was unable to come to some form of agreement with claimants or considered claims to be weak or the demands excessive, the claim was passed on to the Compensation Court to hear. This process and its outcomes are discussed below.<sup>521</sup>

#### 5.4 Compensation Court

This section discusses the four sessions of the Compensation Court held in the Bay of Plenty between March and December 1867. It explains the purpose of the Compensation Court, the main officials and rangatira involved, and outlines some of the administrative difficulties and key events before detailing the awards made by the Court relevant to the Inquiry District.

The purpose of the Court was to decide who of the claimants was eligible to receive awards of land or payment as compensation for the loss of land under the New Zealand Settlement Acts 1863. To claim compensation,

---

<sup>519</sup> Wilson to Dr Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>520</sup> J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, pp 1-6

<sup>521</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 82

written application had to be received by the Colonial Secretary, who then forwarded the claim to the Court. Once eligibility was confirmed, the general area and the size of the award was decided by the Court and it was left to the Crown Agent (also Wilson) and the claimant's agent or the claimants themselves to agree which allotment of land the award would include.

Initially, the first sitting of the Compensation Court was to commence on 1 October 1866, with Judge W C Lyons presiding. However, due to the inaccurate boundary proclamation of the Bay of Plenty District the Court was postponed until March the following year. As explained in the previous chapter, the boundaries of the district were amended and published in the *New Zealand Gazette* on 27 September 1866, and the period for lodging compensation claims was established as three months from 1 September 1866, the date of the new Order in Council.<sup>522</sup> But as noted above, many claims received after the cut-off date of 1 December 1866 were still heard by the Court.

#### 5.4.1 Difficulty finding an experienced Judge

Colonel William Charles Lyon, who served as an officer in the New Zealand colonial forces throughout the 1860s, also served briefly as a Judge. Lyon was appointed Judge of the Bay of Plenty District Compensation Court and was forwarded all claims for land at Ōpōtiki by the end of August 1866.<sup>523</sup> Chief Judge F D Fenton assured the inexperienced Lyon that if possible, he would provide Lyon with the assistance of an experienced Judge during the first sitting at Ōpōtiki, 'but that if none arrives you must proceed with Mr Mair'.<sup>524</sup>

However, Fenton was explicit in a letter to the Native Minister that he would not personally attend the Ōpōtiki sitting.<sup>525</sup> Further, by mid-February it appeared no experienced Judge would be available to assist Lyon, and an adjournment was considered.<sup>526</sup> Attempts to recruit Judge Monro to assist were unsuccessful.<sup>527</sup> Richmond, the Native Minister, continued to think it inadvisable that the inexperienced Lyon hold the Court alone.<sup>528</sup>

On 5 March 1867, just two days before the Compensation Court was due to sit in Ōpōtiki, Judge Lyon wrote to Fenton explaining that despite receiving instructions whilst in Ngāruawāhia to travel straight to Ōpōtiki, he had travelled to Auckland, where his wife was 'confined' with the birth of their child, and Lyon remained there. Having not been paid for January or February, Lyon had requested an advance of money from the Government

---

<sup>522</sup> *New Zealand Gazette*, 27 September 1866, no 52, p 364

<sup>523</sup> Fenton to Lyon, 28 August 1867 in RDB, vol 122, pp 47198-47199

<sup>524</sup> Fenton to Lyon, 28 August 1867 in RDB, vol 122, pp 47198-47199

<sup>525</sup> Fenton to Native Minister, 31 December 1866 in RDB, vol 122, p 47206

<sup>526</sup> Fenton to Native Minister, 13 February 1867, amendment 22 February 1867 in RDB, vol 122, p 47208; William Rolleston to Judge Monro, 27 February 1867 in RDB, vol 122, pp 47209-47210

<sup>527</sup> William Rolleston to Judge Monro, 27 February 1867 in RDB, vol 122, pp 47209-47210; Judge Monro to Rolleston, 27 February 1867 in RDB, vol 122, pp 47211-47214

<sup>528</sup> William Rolleston to Judge Monro, 27 February 1867 in RDB, vol 122, pp 47209-47210

to fund his trip and had refused to travel on to Ōpōtiki when he failed to procure it.<sup>529</sup> Pollen, the Treasurer, had rejected the advance as he considered he did not have the authority to issue it.<sup>530</sup> Later, Lyon's explanations for failing to attend Court in Ōpōtiki were found to be 'unpardonable' and he was removed from his post of Judge with the Compensation Court.<sup>531</sup>

The Ōpōtiki Compensation Court therefore began on 7 March 1867 with just Major William Mair presiding. Mair was joined by Judge Smith on 29 March 1867 for the remaining sitting days.<sup>532</sup> Fenton would later justify his failure to appoint an experienced Judge at the commencement of the Ōpōtiki Compensation Court in a letter to Rolleston:

Mr Whitaker, as Government Agent, in December last, urged upon me the necessity of fixing the Opotiki Court immediately. I replied that if it were to take place before April, I could not answer for experienced Judges being available, as they were all under engagements which would not by that time most probably be concluded. Mr Whitaker said that if I would fix the Court he would endeavour to make the necessary arrangements. I then fixed it assenting to his request. It is not therefore a matter of reproach to me that I did not make "proper provision for the attendance of an experienced Judge at Opotiki," as I had previously warned the Government Agent that if the Court were fixed before April, none would be available. Col. Lyon, of course, is not an experienced Judge. In all subsequent communications with Judges respecting attending the Court, I simply carried out instructions which I from time to time received from the Government.<sup>533</sup>

It is difficult to ascertain what difference a more experienced Judge presiding over the entirety of the Compensation Courts in the Bay of Plenty may have resulted in. However, a comparative study of previous Compensation Courts in other districts may reveal trends and disparities for dismissed and awarded claims.

#### 5.4.2 Compensation Court Judges

Judge William Mair presided over the Ōpōtiki, Whakatāne, and Te Awa o te Atua (Matatā) sittings of the Compensation Court. Mair had served as a major in the colonial forces, but also held some legal experience as a resident magistrate.

Judge T H Smith assisted over the last two weeks of the Ōpōtiki Compensation Court. Smith had limited experience having only been appointed to the Compensation Court in December 1866.

---

<sup>529</sup> Lyon to Fenton, 5 March 1867 in RDB vol 122, pp 47218-47219; Lyon to Fenton, 10 April 1867 in RDB, vol 122, pp 47231-47232; Lyon to Native Minister, 25 April 1867 in RDB, vol 122, p 47235

<sup>530</sup> Pollen to Lyon, 4 March 1867 in RDB, vol 122, p 47220

<sup>531</sup> Fenton to Native Minister, 17 April 1867, and annotations in RDB, vol 122, pp 47233-47234; Warrant signed by Richmond, 28 May 1867 in RDB, vol 122, pp 47250-47259

<sup>532</sup> Minutes of the Compensation Court: Opotiki sitting, 29 March 1867, p 77 in RDB, vol 120, p 46131

<sup>533</sup> Fenton to Rolleston, 30 April 1867 in RDB, vol 122, pp 47243-47244



Judge James Mackay presided over the Maketū Compensation Court. Mackay had considerably more experience than the other Judges, having been appointed in January 1865. However, Mackay presided over comparably few claims during the much shorter Maketū sitting.

#### 5.4.3 Limited sources

Records of the proceedings of the four Compensation Court sittings in the Bay of Plenty District are limited. There are minute books and judges' notes from the four Compensation Court sittings available but these are often light on detail or incomplete. There are also official communications and reports from Wilson, including the full schedules of awarded lands which were finally gazetted in 1874. In addition, a report from Wilson survives that documents his arrival and some of the events of the first sitting of the Compensation Court in Ōpōtiki.<sup>534</sup>

#### 5.4.4 Ōpōtiki Compensation Court (7 March to 8 April 1867)

Notice for the first Bay of Plenty District Compensation Court in Ōpōtiki was not gazetted until early January 1867. The Court ran every day from 7 March to 8 April 1867, excluding Sundays. Judge Mair presided over the Court with Judge Smith assisting from 29 March 1867. The claimants were represented by H T Clarke who was also Resident Magistrate in Tauranga. J A Wilson acted as the Crown Agent, alongside his role as Special Commissioner.

During this Ōpōtiki sitting of the Court, 'to protect the interests of the Government', Wilson provided the Ōpōtiki Compensation Court with the census he had taken in 1866:

of all the tribes in the confiscated Bay of Plenty district; that line between Opape on the East, the Tarawera river on the West, and Mount Edgecombe [Putauaki, (Mt Edgecumbe)] on the South. The Census shews the number of men, women, and children, surrendered and unsundered in each hapu and tribe; together with relationships, that is to say, Husbands, their present wives, and the children of those parents.<sup>535</sup>

Wilson believed the census (included above) was of great assistance to the Court, 'in order to ascertain the acreage due to each non rebellious native who may be able to prove a claim'.<sup>536</sup>

---

<sup>534</sup> Wilson to Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington; J A Wilson, to Auckland Superintendent, 1 May 1866 in RDB, vol 133, pp 51036-51037; Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>535</sup> Wilson to Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>536</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

The Ōpōtiki Court was forced to adjourn earlier than desired as a consequence of many claimants and witnesses failing to attend their hearings. Wilson stated many were unable to attend due to being ‘engaged on our side in the war at Rotorua’, or busy harvesting their crops.<sup>537</sup>

Following the sitting of the Ōpōtiki Compensation Court, Wilson reported that 146 claims from a total of 318 individual claimants had been disposed of by the court.<sup>538</sup>

#### 5.4.4.1 *Complications in out-of-court settlements and the Compensation Court*

Towards the end of the Ōpōtiki Compensation Court hearings a major issue was raised by Judge Smith regarding the confiscation of land. The Judge questioned whether the Bay of Plenty had in fact been ‘occupied by the Government, for the purpose of Military Settlement’.<sup>539</sup> The issue initially arose as a result of Wilson allocating land for assignment to military settlers that still had active claims against it in the Court.

The situation was detailed by Wilson in a letter to Pollen following the sitting of the Ōpōtiki Court. Wilson explained that in October 1866, whilst he was attempting to make land arrangements, Chief Judge Fenton had emphasised the necessity of putting aside all the land ‘loyal’ Māori had made claims to, so as to allow them reserves ‘of their own lands’ if the Court found in their favour.<sup>540</sup> However, Wilson replied that his understanding was that Fenton’s instructions were in opposition to the Government’s view. By mid-November, Wilson had arranged substantial plots elsewhere in the district to accommodate all such claims, which he believed would provide adequate compensation in place of those lands claimed by Māori which had already been allocated for military settlement.<sup>541</sup> However, later on, ‘upwards of sixty’ new claims from Māori were forwarded to Wilson from Auckland. Many of these claims were for land Wilson had already allocated and raised the issue of whether Māori claimants could legally be deprived of the lands if Courts found in favour of their claims.<sup>542</sup>

According to Wilson, Fenton insisted that the Government needed to prove the confiscation of land was legal as the ‘Order to take lands within the confiscated district, for the “purposes of settlements” does not shew that the lands are required for purposes of military defence’.<sup>543</sup> If the confiscation was illegal, Fenton continued ‘you cannot take the lands of Loyal persons, unless you pay them money’.<sup>544</sup> The issue remained

---

<sup>537</sup> Wilson to Pollen, 26 April 1867 in ACGO 8333 IA1 289 / [37] 1867/1321, ANZ, Wellington

<sup>538</sup> J A Wilson, ‘Return of Reserves Made for Friendly Natives and Returned Rebels’, 9 June 1867, AJHR, 1867, A-18, p 4

<sup>539</sup> Wilson to Pollen, 30 April 1867, IA1 1867/2659 (doc1, p 106); Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 84

<sup>540</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 85

<sup>541</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington; Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>542</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>543</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>544</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

unresolved at the opening of the first Compensation Court at Ōpōtiki in March 1867 and remained significantly controversial and complicated for presiding Judge Mair to choose not to 'decide any questions of importance until assisted by an experienced judge'.<sup>545</sup>

With the arrival of judicial support from Judge Smith, Wilson chose to raise the issue in open court. According to Wilson, Judge Smith responded, that 'It is a point the Government ought not to raise for its own sake'.<sup>546</sup> This was perhaps in an attempt to avoid embarrassing the Government. However, Wilson replied that 'The Government desires to be made aware of any difficulty in order to know how to act'.<sup>547</sup>

Smith gave a considered response in which he revealed that he considered Wilson's arrangements illegal, and that they could not be accepted by the Court. To progress past this contentious point, Smith stated the Court would issue set amounts of land to successful claimants – from which Wilson, as Crown Agent, could arrange awards for claimants in locations agreeable to the claimants. However, Smith stated that if agreement could not be found within six months, the Court would 'give his [the claimant's] own land [back] to that Claimant even though it may be in the possession of a military settler; in which event the Government would of course be obliged to compensate the latter'.<sup>548</sup> Smith also suggested that a replacement Order in Council was needed which specified certain lands within the confiscated district which were to be set aside specifically for military settlements. This would entitle the Government to take those lands under the New Zealand Settlements Acts, and elect to give money or land in lieu to any successful claimants in this scenario.<sup>549</sup>

It appears it was on these terms that the Ōpōtiki Compensation Court continued to sit until 8 April 1867, as authorities considered how to move forward.

A few days after Smith provided the opinion above, the general matter was discussed again in the company of Colonel Haultain, Smith, and Wilson. Subsequently, Haultain directed Wilson to furnish boundaries for a district in the manner directed by Smith to Pollen's office. Wilson proceeded to do this on 30 April 1867. Wilson requested a new Order in Council, with the boundaries below, to be made prior to the next sitting of the Court. The boundaries were as follows:

Starting from Tirohanga, and running on a line bearing due South seven miles/thence by a line bearing west which shall strike the Waiotahi river; thence ascending the course of the Waiotahi River, until it reaches the southern boundary of the confiscated block; thence running westerly by the southern boundary of the

---

<sup>545</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>546</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>547</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>548</sup> Wilson to Pollen, 30 April 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>549</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

confiscated block until it reaches the Wakatane river; thence by the course of Wakatane river to the sea; and thence from the mouth of Wakatane river by the sea coast to Tirohanga.<sup>550</sup>

The Order in Council was gazetted on 31 August 1867.<sup>551</sup>

The legal opinion of the Attorney-General Prendergast was also sought. Prendergast considered there to be no issue with the original Order in Council. 'The Order declares that the land is required for the purposes of the Act and are subject to the provisions thereof. The Act provides that upon such an Order being made the land is to be deemed Crown Land'.<sup>552</sup>

A similar opinion was held by the under-secretary of the Native Department, William Rolleston. Rolleston considered that the land in the Bay of Plenty had been taken for settlement 'as a matter of fact'.<sup>553</sup> He refused to consider that the Courts held jurisdiction that would allow them to override the Crown and to award lands to claimants which had already been allocated by the Crown to military settlers.

By the Maketū sitting of the Compensation Court in July 1867 the Court's judges had accepted and adhered to the Government's interpretation that successful claims for land already allocated for military settlement would receive land elsewhere.<sup>554</sup>

#### 5.4.5 Maketū Compensation Court (8 to 12 July 1867)

Between 8 and 12 July 1867, a second sitting of the Compensation Court was held in Maketū with Judge Mackay presiding. The first day was adjourned at the request of Mr Skeet (presumably surveyor H L Skeet) who was representing the Crown in the absence of J A Wilson and his witnesses, who were delayed by their steamer at Ōpōtiki.<sup>555</sup> From 9 July, J A Wilson acted as the Crown Agent. The minutes make no apparent mention of a legal representative for the Māori claimants.<sup>556</sup> A comparatively smaller number of claims were brought to the Maketū Court, of which several claims were withdrawn or adjourned.<sup>557</sup> Despite the Court sitting in Maketū, several of the claims heard were for lands in and around Ōpōtiki.

Wilson indicated in a letter to Pollen that the 'various tribes' with claims in the Bay of Plenty District, including Whakatōhea, were all notified of the dates for the sitting of the Maketū Compensation Court ahead of time.<sup>558</sup>

---

<sup>550</sup> Wilson to Pollen, 30 April 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>551</sup> New Zealand Gazette, 31 August 1867, p 336

<sup>552</sup> Prendergast, 7 June 1867 in RDB, vol 123, p 47443

<sup>553</sup> Memorandum by Rolleston, 6 July 1867, RDB, vol 123, p 47439

<sup>554</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 86

<sup>555</sup> Proceedings of the Compensation Court held at Maketu, July 1867 in RDB, vol 120, p 46360

<sup>556</sup> Proceedings of the Compensation Court held at Maketu, July 1867 in RDB, vol 120, pp 46358-4639

<sup>557</sup> Proceedings of the Compensation Court held at Maketu, July 1867 in RDB, vol 120, pp 46358-4639

<sup>558</sup> Wilson, to Pollen, 23 July 1867 in ACGO 8333 IA1 293 / [13] 1867/2659, ANZ, Wellington; Proceedings of the Compensation Court held at Maketu, July 1867 in RDB, vol 120, pp 46358-4639

Wilson himself claimed to have been unaware of the scheduled Court sitting until just six days before the event, having received no notice from the administrative arm of the Auckland Courts. Whether the claimants received notice ahead of Wilson is unclear. Once aware, Wilson immediately made his way to Ōpōtiki where he found his principal Whakatōhea witnesses (likely including, Wi Tiria, Te Whariki, and Te Ranapia among them) that he had organised to testify against some of the overreaching land claims of Ngāi Te Rangi and Te Arawa.<sup>559</sup>

According to Wilson, the witnesses were still at Ōpōtiki and not Maketū, as they were afraid to return to their reserve at Ōpape due to the recent attacks by Pai Mārire adherents around the Tirohanga headland.<sup>560</sup> Two members of Whakatōhea had, he said, been fired upon the previous week whilst returning from Maketū. The same Pai Mārire group were also suspected of the recent killings of Bennett White and local mailman Wi Popata.<sup>561</sup> To avoid the dangers of a Pai Mārire ambush, Wilson travelled with his Whakatōhea witnesses by steamer, rather than overland from Ōpōtiki to Maketū.<sup>562</sup> Wilson intended his witnesses to 'resist claims that the foreign Arawa, and Ngāi Te Rangi tribes have made upon their lands'. However, some of his expected witnesses from Putauaki (Mt Edgecumbe), Rangitaiki, and Te Awa o te Atua (Matatā) failed to arrive, despite being sent for.<sup>563</sup>

Wilson complained that the number of claims heard was limited due to claimants applying for an adjournment until the next sitting of the Compensation Court. Wilson stated the key reasons for the adjournments were an absence of witnesses caused by the short notice provided for the sitting, the rumoured invasion of Rotorua by Pai Mārire adherents, and their involvement in the Te Arawa pursuit of Popata's killers.<sup>564</sup>

Wilson also complained to Pollen of the inadequate assistance, funds, and time he was provided to defend the Crown against the intertribal claimants:

especially at a place situated like Maketu, one or two days ride away from the land claimed, and from the residences of the many natives who had an interest in it before their rebellion – and even if I had the means I should have required from two to three weeks notice to enable me to meet at Wakatane [sic] or Matata a final session in which about 100 claims have to be heard: ie to meet them in the manner in which I should wish to be prepared.<sup>565</sup>

---

<sup>559</sup> Wilson, to Pollen, 23 July 1867; Proceedings of the Compensation Court held at Maketu, July 1867 in in RDB, vol 120, pp 46358-4639

<sup>560</sup> Wilson, to Pollen, 23 July 1867

<sup>561</sup> 'The Murder of Mr Bennett White and an Arawa Near Opotiki', *West Coast Times*, 25 July 1867

<sup>562</sup> Wilson, to Pollen, 23 July 1867

<sup>563</sup> Wilson, to Pollen, 23 July 1867

<sup>564</sup> Wilson, to Pollen, 23 July 1867

<sup>565</sup> Wilson, to Pollen, 23 July 1867 in ACGO 8333 IA1 293 / [13] 1867/2659, ANZ, Wellington

With this in mind, Wilson applied for adjournment until September and this was granted by Judge Mackay.<sup>566</sup>

Significantly, during the Maketū session the question was again raised by Judge Mackay of prematurely allocated military settlement allotments. Mackay ruled that land already allotted to military settlers could not be returned by the Compensation Court to claimants. For example, instead of returning the land which they held legitimate claim to, Mackay issued the claimant group comprised of Te Warihi (Ngāti Tama, Te Kareke), Ngaputa, and Raima (claim no.261) and claimant Mihi Terina (Ngāti Rua) (claim no.260) each with 35 acres of land in Ōpōtiki, the location of which was to be decided upon by them with Wilson as Crown Agent, as per the new process.<sup>567</sup> Te Warihi, Ngaputa, and Raima settled with Wilson for Eastern portion Lot 31, Worth's Survey, while Mihi Terina settled with Wilson for Lot 14, northern portion, McGuire & Rolleston's Survey. The paperwork for both was not signed until June 1869.<sup>568</sup> By this time, at least two other claimants from this sitting of the Court had settled for award of lands in the vicinity of Ōpōtiki, including Whakatōhea rangatira Tiwai Piahana (claim nos.141-146) who received an award of 100 acres of land in Simpson's Survey, Otara (near Ōpōtiki), and Pākehā politician, lawyer and land speculator Frederick Whitaker, who received a one acre allotment within the Ōpōtiki Military Township.<sup>569</sup>

#### 5.4.6 Whakatāne Compensation Court (9 September to 1 October 1867)

The Compensation Court sat for a third time between 9 September and 1 October 1867 in Whakatāne, with Judge Mair presiding. H T Clarke was in attendance as counsel for the claimants, and J A Wilson once again acted as Crown Agent. At least 160 claims were heard during the Whakatāne Compensation Court, including at least 27 claims to land in the North-Eastern Bay of Plenty Inquiry District, particularly around Ōpōtiki.<sup>570</sup>

Awarded lands were commonly quarter acre lots in towns, while awards of more rural lands were commonly 50-acre allotments. Hira Te Okiwa of Ngāti Rua claimed land at Ōhiwa and Ōpōtiki and she was awarded 50 acres in Lot 9 of McGuire and Rolleston's Survey, 25 acres in Hiwarau when that area was subdivided, and two quarter-acre lots in the civil township of Ōpōtiki.<sup>571</sup>

---

<sup>566</sup> Judge Mackay's Notes Compensation Court Sitting Maketu, 12 July 1867 in RDB, vol 120, pp 46443-46444

<sup>567</sup> Wilson, to Pollen, 25 July 1867 in ACGO 8333 IA1 293 / [43] 1867/2771, ANZ, Wellington

<sup>568</sup> Te Kuka Te Mea of Ngai Te Rangi (claim no.268) also received the sum of £10 in place of his claim to land in Opotiki; Awards of the Compensation Court: Maketu Sitting, 1867 in RDB, vol 120, pp 46463 & 46477

<sup>569</sup> Wilson, to Pollen, 23 July 1867 in ACGO 8333 IA1 293 / [13] 1867/2659, ANZ, Wellington; Awards of the Compensation Court: Maketu Sitting, 1867 in RDB, vol 120, p 46461

<sup>570</sup> Note that several claims were treated as duplicates. Minutes of the Compensation Court: Whakatane sitting, 9 September – 1 October 1867 in RDB, vol 121, pp 46489-46618

<sup>571</sup> Minutes of the Compensation Court: Whakatane sitting, 19 September 1867, pp 41-42 in RDB, vol 121, pp 46568-46569

A number of claims to land within the Inquiry District, specifically Ōpōtiki and Waioatahe, were from claimants of non-Whakatōhea or Ūpokorehe affiliated iwi and hapū. These were largely dismissed by the Judge.<sup>572</sup> The claims of Hamiora Tangiawa of Ngāi Te Rangī (claim no.293) to land in Ōpōtiki and Waioeka and elsewhere were refuted by rangatira of Whakatōhea and Tangiawa's claims were subsequently dismissed.<sup>573</sup> Only a small number of these non-Whakatōhea and Ūpokorehe claims were upheld. Some of the upheld claims received awards of money instead of land in the Inquiry District, such as Ngāitai rangatira Wiremu Kīngi (claim no.19), whose claim to land in Waiau resulted instead in an award of £75.<sup>574</sup> During out-of-court settlements, Wilson had rejected Kīngi's claim to lands at Ōpape.<sup>575</sup> A smaller number of non-Whakatōhea and Ūpokorehe claims were awarded land closer to their commonly accepted tribal lands, such as Ngamanu Te Wharau of Ngāti Pukenga, whose upheld claim to land in Ōpōtiki resulted in an award of 15 acres of land within Simpson's Survey in Whakatāne.<sup>576</sup>

Interestingly, a claim from Huriana Taharoa of Ūpokorehe for land in Waianae (Waiotahi) (claim no.257) was dismissed by the Compensation Court after the Crown Agent provided evidence that Native title for the area of land had been 'extinguished' in 1840.<sup>577</sup> No further detail was provided in the minute books, but presumably this infers the land was sold or traded to Pākehā prior to 1840.

Due to the limited documentation around decisions in both the minute books and judge's notes, it is difficult to determine how different witness testimony was weighted, how decisions regarding size or locality of lands to be awarded were made, or why some claims were upheld when others were not. However, despite 'surrendered rebels' being eligible for awards of land—it appears admitting involvement with Pai Mārire still often led to claims being dismissed. For example, Riria Putahi (claim no.191) who claimed land in Ōpōtiki, Whakatāne, and elsewhere through her ancestors and cultivation, admitted to living on her land with Pai Mārire adherents and that her husband Hemi Haukura 'was a Hauhau and went to fight at Maketū, but when it went against him he came back'.<sup>578</sup> Putahi's claim was first adjourned, and then dismissed the next sitting day. No explicit explanation for the dismissal is provided, but it is likely that Putahi's association with Pai Mārire played a part in the decision to dismiss her claim.

---

<sup>572</sup> Claims dismissed after claimant failed to appear in the Whakatane Compensation included claim nos. 2, 3, 4, 76, 16, 123, 198, 230, 255, 262, 272;

<sup>573</sup> Minutes of the Compensation Court: Whakatane sitting, 30 September 1867, pp 84-86 in RDB, vol 121, pp 46613-46616

<sup>574</sup> Minutes of the Compensation Court: Whakatane sitting, 26 September 1867, p 60 in RDB, vol 121, p 46589

<sup>575</sup> Wilson to F Whitaker, 14 November 1866 in RDB, vol 120, pp 46353-46357

<sup>576</sup> Minutes of the Compensation Court: Whakatane sitting, 28 September 1867, p 75 in RDB, vol 121, p 46604

<sup>577</sup> Minutes of the Compensation Court: Whakatane sitting, 23 September 1867, p 52 in RDB, vol 121, p 46581

<sup>578</sup> Minutes of the Compensation Court: Whakatane sitting, 23 & 24 September 1867, pp 51 & 54 in RDB, vol 121, pp 46580 & 46583

#### 5.4.6.1 *'Rebel's' wives as claimants*

The issue of wives of 'rebels' (Pai Mārire adherents) eligibility to claims of land became a prominent theme during the Whakatāne Compensation Court. Heni Te Kumete (Ngāti Awa, Ngāi Te Rangi) (claim no.271) claimed land at Te Awa o te Atua (Matatā) and elsewhere and although she admitted an association with Pai Mārire during her hearing and that her husband had been taken prisoner during fighting with the Crown, she asserted she had maintained her neutrality throughout.<sup>579</sup> Judge Mair found:

In this case the proof is not sufficient that the claimant was a rebel, she is said by two witnesses to have been a Hauhau, but it has been proved that she was and is still halfwitted and of that peculiar temperament liable to be influenced by Hauhau, her first husband was a loyal man, and the second husband fought on the side of the Government at the Kaokaoroa, after which he went with [name illegible] party to Whanganui, but that act does not prove him to have been a rebel, the woman did not go with him, and the opinion of the Court is that claimant does not come within the meaning of any of those clauses of the Act, which exclude certain persons from Compensation. Claimant will receive an award of land at Te Awa o te Atua, but the amount will not be stated until the rest of the Awa o te Atua claims have been heard.<sup>580</sup>

Some of the Judge's comments during the hearing were interpreted by Wilson, as Crown Agent, to be 'highly favourable' towards 'rebel' wives and Pai Mārire adherents. The objectionable comments were omitted from the official record, and Wilson insisted they be included. Eventually, instead of altering proceedings, a document produced by Wilson including the Judges words, or words to the like effect, was allowed to be attached to the court proceedings. The document read:

After the word hauhauism in the 7th line "neither would it appear that hauhaus as such, come under the 5th clause of the Act of 1863".

And in the 13th line after the word rebel "and supporting him have been a rebel".<sup>581</sup>

On 26 October 1867, Wilson wrote to the Attorney-General seeking his opinion on the eligibility of the wives of 'rebels' prior to the next sitting of the Court. Wilson sought clarification on:

whether the wives of rebels are entitled in their own right to receive lands they may claim in the Confiscated District – or whether they come under the operation of the 2<sup>nd</sup> sub-section of the 5<sup>th</sup> clause of the NZ S[ettlements] Act of 1863.<sup>582</sup>

---

<sup>579</sup> Minutes of the Compensation Court: Whakatane sitting, 28 September 1867, pp 82-84 in RDB, vol 121, pp 46611-46613

<sup>580</sup> Minutes of the Compensation Court: Whakatane sitting, 28 September 1867, p 84 in RDB, vol 121, p 46613

<sup>581</sup> Wilson, to Pollen, 4 November 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington

<sup>582</sup> Wilson, to Pollen, 26 October 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington



Wilson continued, 'If they are exempt it will probably be found that only a moiety [portion] of the district had been confiscated – not to mention the precedent to other confiscated districts'.<sup>583</sup> Wilson expressed his concern that there would be general dissatisfaction if a judgment was found in the eight claimants' favour, as:

there are 228 married women in the confiscated district, who under the impression they are implicated in their husbands rebellion have withdrawn or forborne to make claims which they would have been entitled to urge with a prospect of success. And though the time will have elapsed when these 8 cases are heard, within which claims may be received, they will consider they have a grievance and their husbands will perhaps request the Govt to re-open the business.<sup>584</sup>

The Attorney-General Prendergast replied on 6 November 1867:

If the period has elapsed within which such claims can be put in that seems a sufficient answer.

The letter does not state what the question is upon which an opinion is asked.

I assume that the question is, whether wives of these persons who have taken part in the rebellion, but who have themselves not taken any part, are entitled to compensation.

Assuming this to be the question the answer will depend entirely upon whether or not such persons have any title [word unclear] or claim in their own right in the land taken, thus being a question of Maori custom. I can form no opinion.

It is clear that the sworn fact of a husband having taken part in the rebellion would not affect the wife either criminally or civilly.

If the wife has taken part or has herself done any act specified in the subsection of the fifth section of N Z Settlements Act 1863 she will have thereby disabled herself, even though such act were done by the coercion of her husband: for though in certain minor offences against the Law the wife would be treated as responsible whether she has acted by the command or under the coercion of her husband that would not be the case on a charge of rebellion or treason.

I do not know that I need remark specially upon the sub clauses of section five further than to point out that the law has such regard "to the duty love and tenderness which a wife owes to her husband that it does not make her an accessory to felony by any precept whatever which she may give to him considering that she ought not to [word unclear] her husband".

---

<sup>583</sup> Wilson, to Pollen, 26 October 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington

<sup>584</sup> Wilson, to Pollen, 26 October 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington

If therefore the wife should have done no more than receive her husband after the commission of his offence she will not be guilty of any offence. If however she should have assisted in the commission of the offence she will.<sup>585</sup>

Subsequently, it was established that the wives of 'rebels' were entitled to compensation in cases where they were otherwise eligible. The minute books of the Whakatāne and Te Awa o te Atua Compensation Courts have been examined for examples of this being applied within the Inquiry District. No obvious cases of successful claims for compensation by Māori women with 'rebel' husbands were identified. However, similarly, a successful claim was made by Huhana Te Arawaire (Huihana Te Arawaere) of Ngāi Tama (claim nos.122 & 150), despite her brother and parents who were identified as 'rebels' having charge of her property while she was absent.<sup>586</sup> The Court awarded Te Arawaere 10 acres in Opotiki, as a 'friendly Native'.<sup>587</sup>

Following the Whakatāne session of the Compensation Court, 23 claims remained to be heard. Of these claims, Wilson requested eight which had been brought by 'rebel' wives to be adjourned.<sup>588</sup>

#### 5.4.7 Te Awa o te Atua (Matatā) (3 to 19 December 1867)

The last sitting of the Bay of Plenty District Compensation Court was held in Te Awa o te Atua (Matatā) between 3 and 19 December 1867. The presiding Judge in Te Awa o te Atua was Judge Mair, with J A Wilson again as Crown Agent. As with the Maketū Compensation Court, there was no apparent legal representation for claimants. At least 77 claims were heard during the sitting in Te Awa o te Atua, the majority being outside of the Inquiry District, for lands in Whakatāne and Te Awa o te Atua. As few as eight claimants with ten claims were heard for lands within the Inquiry District during this sitting of the Compensation Court, all of which were heard in the first two days of sitting.<sup>589</sup>

Of the eight claimants with claims for land within the Inquiry District only one claimant appears to have been successful. Te Pirini (claim no.312) claimed land at Ōpōtiki and was awarded 25 acres in the western half of Lot 13, McGuire's Survey, east of Otara River, Ōpōtiki.<sup>590</sup> Curiously, the award of land to Te Pirini does not appear in the 1874 gazette notice proclaiming the awards.

---

<sup>585</sup> Attorney General Prendergast, to Colonial Secretary, 6 November 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington

<sup>586</sup> Claims 122 & 150 in Minutes of the Compensation Court: Whakatane Sitting 17 September 1867, pp 33-34 in RDB vol 121, pp 46560-46561

<sup>587</sup> Draft schedule no.9 in RDB vol 120, pp 46296-46297

<sup>588</sup> Wilson to Pollen, 26 October 1867 in ACGO 8333 IA1 296 / [36] 1867/3589, ANZ, Wellington

<sup>589</sup> Claims 196, 197, 251, 303, 304, 307, 308, 309, 311, 312 in Minutes of the Compensation Court: Te Awa o te Atua (Matatā), Sitting 3 – 19 December 1867, pp 1-139 in RDB vol 121, pp 46736-46877

<sup>590</sup> Minutes of the Compensation Court: Te Awa o te Atua (Matatā) sitting, 3 – 4 December 1867, pp 4-7 in RDB, vol 121, pp 46742-46745

The remaining claims within the Inquiry District appear to have all been dismissed for varying reasons. Mereana Taipari (claim nos. 196, 197 and 251) who was claiming in Ōpōtiki failed to appear in Court.<sup>591</sup> Tamanohoaka (claim nos. 304 and 306) claims for land at Ōpōtiki and Ōhiwa were dismissed as the 'claimant proved to have been a rebel at the Whakatāne sitting of the Court'.<sup>592</sup> Meanwhile, claimant Hoani Tunui's case (claim no.307) was dismissed as Tunui had received an award of land during the Ōpōtiki sitting of the Court.<sup>593</sup>

#### 5.4.8 General issues with the Compensation Court

Wilson's position as both Special Commissioner and Crown Agent was compromising. As the Waitangi Tribunal's *The Ngāti Awa Raupatu Report* established, holding both positions allowed Wilson to exert an influence over the Court process which 'directly prejudiced both the claimants and the nature of the inquiry itself'.<sup>594</sup>

It is impossible to determine how many Māori who would have otherwise been eligible, failed to file a claim. Confiscation occurred at a time of significant disruption for the peoples of the Bay of Plenty, which was only worsened by the confiscation itself. It is not a surprise that Māori had difficulties engaging with a European bureaucratic process dependent on access to literacy. Further, miscommunications or misunderstandings around eligibility, like the cases of the 'rebel's wives' discussed above, left some believing that they were ineligible when that was not always the case.

It is also unclear how many claims were dismissed by the Court when the claimant failed to appear before the Court in person. As has already been discussed, the Compensation Court sessions were often held under short notice, in areas remote from the lands claimed and the residence of many of the applicants. Sessions were also often held during times of harvest and ongoing hostility with Pai Mārire adherents which created difficulties travelling, as well as the 'extreme dislocation resulting from the confiscation' itself.<sup>595</sup>

The Compensation Court process pitted Māori against Māori and resulted in some claimants providing evidence against the claims of others solely to secure their own claims.<sup>596</sup> There is evidence that Wilson organised such witnesses to dispute those claims he did not support.<sup>597</sup>

---

<sup>591</sup> Minutes of the Compensation Court: Te Awa o te Atua (Matatā) sitting, 3 December 1867, p 1 in RDB, vol 121, p 46739

<sup>592</sup> Minutes of the Compensation Court: Te Awa o te Atua (Matatā) sitting, 3 December 1867, p 3 in RDB, vol 121, pp 46741

<sup>593</sup> Minutes of the Compensation Court: Te Awa o te Atua (Matatā) sitting, 3 December 1867, p 7 in RDB, vol 121, pp 46745

<sup>594</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 83

<sup>595</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 83

<sup>596</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 82

<sup>597</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 82

#### 5.4.9 Awards made

A report regarding the confiscated lands of Bay of Plenty was presented to the House of Representatives in August 1873.<sup>598</sup> The report indicated that due to the ‘unsettled state of the district’ since the sitting of the Compensation Courts, progress had been slow in regard to these awards. In the four or five years that had elapsed, Wilson reported that the award schedules had been misplaced and confusion had arisen where titles had not been issued but lands had still been sold or resold without the official deeds.<sup>599</sup>

In late 1871, the Government re-commissioned Wilson to arrange the unsettled awards that had remained unselected and un-surveyed up to that point.<sup>600</sup> By the end of 1872, it was reported these matters had been brought to a close.<sup>601</sup> Accordingly, an updated return of the land distributed was presented:

**Figure 14: Return of Confiscated Lands in the Bay of Plenty, 1873<sup>602</sup>**

No.		Acres
1	Compensation to 1,074 loyal Natives	96,261
2	Lands to 1,717 surrendered rebels, being at 61 acres for each	104,952
3	Given back to the Arawa	87,000
4	Lands surrendered	40,832
5	Military settlers	23,461
6	University endowment, &c.	10,325
7	Old land claims	3,832
8	Miscellaneous	10,930
9	Error in former estimate	5,000
10	Land sold	98
11	Land given to surrendered Uriwera	500
12	Balance in hands of Government	56,809
	<b>Total</b>	<b>440,000</b>

Although the total of 440,000 acres matches the allocation of land reported by Wilson’s 1867 return (discussed above), there are some notable differences in Wilson’s updated return of land, discussed below. Wilson’s updated return still showed Te Arawa as receiving 87,000 acres of land and still included the 5,000 acre error

<sup>598</sup> J H H St John, ‘Further Papers Relative to Confiscated Lands’, 12 August 1873, AJHR, 1873, C-4b, pp 5-6

<sup>599</sup> J A Wilson, ‘Reports on Settlement of Confiscated Lands’, 7 November 1871, AJHR, 1872, C-4, p 3

<sup>600</sup> J A Wilson, ‘Reports on Settlement of Confiscated Lands’, 7 November 1871, AJHR, 1872, C-4, p 3

<sup>601</sup> However, it should be noted that many Crown Grants still remained to be issued at this time; J H H St John, ‘Further Papers Relative to Confiscated Lands’, 12 August 1873, AJHR, 1873, C-4b, p 5

<sup>602</sup> J H H St John, ‘Further Papers Relative to Confiscated Lands’, 12 August 1873, AJHR, 1873, C-4b, pp 5-6

from the initial surveying estimate. Unlike the 1867 return, it also included a 10,325 acre university endowment, 500 acres for 'surrendered Uriwera' (Tūhoe), as well as 98 acres which had been privately sold. The new return also specified 96,261 acres would go to 1,074 'loyal Natives'.<sup>603</sup> Interestingly, the number of acres allocated for award to 'surrendered rebels' had grown from 96,000 acres to 104,952 acres, to be shared between 1,717 Māori.<sup>604</sup> Of the 'rebels', Wilson noted that they had been 'mostly engaged in the cultivation of the reserves set apart for them'.<sup>605</sup> It also specified that 23,461 acres had been allocated for military settlement, although it noted that 15,000 acres of this land lay idle, 'most being in hands of non-residents'.<sup>606</sup> The remaining lands with the Government were mostly considered too hilly, broken, or swampy to be fit for Pākehā settlement at the time.<sup>607</sup>

By the end of 1874, 32 sequential schedules of awarded lands had been presented to the House and published in the *New Zealand Gazette*. The schedules document the specific awards of land made in the Bay of Plenty District under clauses 3, 4, and 6 of the Confiscated Lands Act 1867.<sup>608</sup> Over and above this were the unnumbered schedules that were presented to the House in 1867, which included the eight reserves privately arranged by Wilson, the individual agreements of compensation arranged by Wilson, and the awards of the Ōpōtiki Compensation Court yet to be agreed upon by the claimant(s) and Wilson.<sup>609</sup> Together these schedules detailed the awards to Māori which accumulatively amounted to the 96,261 and 104,952 acres awarded to 'loyal' Māori and 'surrendered rebels' respectively.

Each schedule included one or more individual awards of land, each to individual claimants, joint claimants, or trustees on behalf of a group of claimants. For many of the land awards it was specified whether the land was, or was not, alienable. Those lands that were alienable, were made specifically so only under the consent of the Governor in Council. Similarly, many of the awards specified whether the Government reserved their 'right to take one or more lines of road' from the awarded lands. To complicate matters, there are several other series of conflicting unpublished schedules drafted by Wilson at the time. For the purposes of this report, those schedules published in the *Appendices to the Journal of the House of Representatives* (AJHR) and the

---

<sup>603</sup> The Sim Commission revised this figure to 118,300 acres restored to 'loyal Natives'; W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

<sup>604</sup> The Sim Commission revised this figure to 112,300, acres restored to 'rebel Natives'; W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

<sup>605</sup> J H H St John, 'Further Papers Relative to Confiscated Lands', 12 August 1873, AJHR, 1873, C-4b, p 6

<sup>606</sup> J H H St John, 'Further Papers Relative to Confiscated Lands', 12 August 1873, AJHR, 1873, C-4b, p 6

<sup>607</sup> J H H St John, 'Further Papers Relative to Confiscated Lands', 12 August 1873, AJHR, 1873, C-4b, p 6

<sup>608</sup> 'Reports on Settlement of Confiscated Lands', AJHR, 1872, C-4, pp 1-16; J A Wilson, 'Reports on Settlements of Confiscated Lands', 26 February 1873, AJHR, 1874, C-3, pp 1-9; NZ Gazette, 14 November 1874, pp 775-791

<sup>609</sup> J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, pp 1-6. In Wilson's handwritten draft schedules, these unnumbered AJHR schedules correspond with 'Schedule of Claims heard before Judge Mair (A)' in RDB vol 119, pp 45813-45814

*New Zealand Gazette* have been prioritised, with additional information pulled from the draft schedules, sourced through the ‘Raupatu Document Bank’, where necessary.

The gazettement of the award in many cases did not indicate the actual issuing of a Crown Grant to claimants by the Government. It took a considerable amount of time to have many of these Crown titles granted, with the first not finalised until 1874. The Ngāti Awa raupatu report indicates that others in the region took as long as 10 years to be finalised.<sup>610</sup>

The Table (Figure 16) below presents a selection of awards from the schedules discussed above and relevant to the North-Eastern Bay of Plenty Inquiry District either through the location of the lands awarded or through individual or iwi association with the Inquiry District.

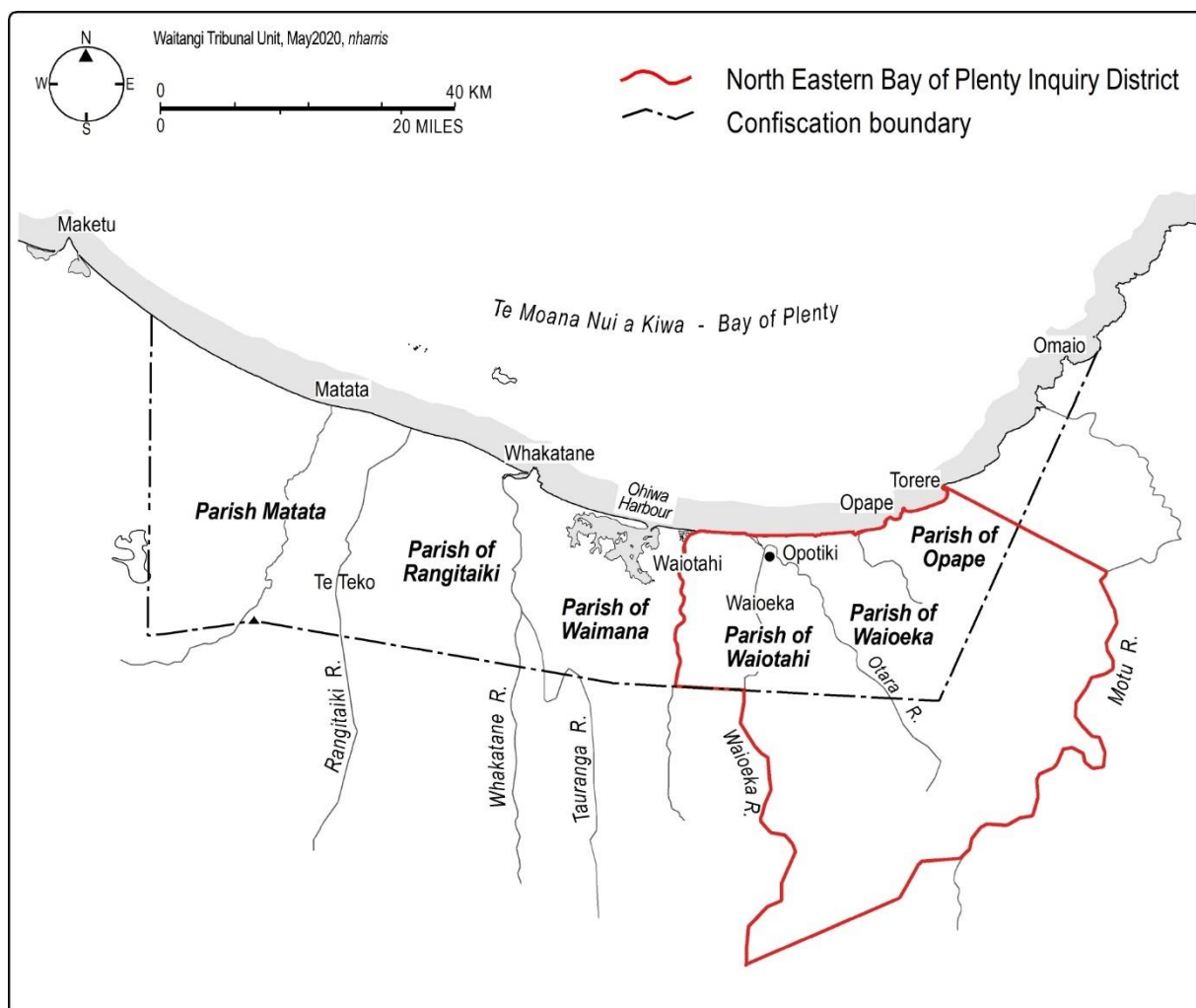


Figure 15: A map showing the north-eastern Bay of Plenty parish and general reference for the Table in Figure <sup>611</sup>

<sup>610</sup> Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 88

<sup>611</sup> Opotiki County Map showing Boundaries of confiscated land, 1927 in BAPP 24788 A1721 213 / b B43, ANZ, Wellington; Therese Crocker, ‘North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper’ (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5, p 49; *New Zealand Gazette*, 27 September 1866, p 364

Figure 16: Selection of lands awarded within the North-Eastern Bay of Plenty Inquiry District & to groups/individuals associated with the Inquiry District

Description, or Lot no.	Name of awardee / trustee	Hapu / iwi	Rank	Sex	Locality of award	Size (acres, roods, perches)			AJHR Schedule	Clause of Act	£	Alienable	Source
92, Commercial Township 93, Commercial Township	Hira Te Popo		Chief	M	Ōpōtiki	0	2		9	4 <sup>th</sup>			AJHR 1872, C4, p12
	Topeora		Native	M									
	Mihaka Rangiaho		Native	M									
2, Pitcairn's Survey, Hiwarau	Huriana		Native	F	Ohiwa	25			9	4 <sup>th</sup>			NZG 14 Nov 1874, p779
4, Pitcairn's Survey, Tirohanga	Rewiri Rangimatanuku		Chief	M	Tirohanga	50			11	4 <sup>th</sup>			AJHR 1872, C4, p12
29, Pitcairn's Survey, Tirohanga	Pokanoa Awanui		Chief	M	Waiaua	48	3	37	11	4 <sup>th</sup>			AJHR 1872, C4, p12
42, Pitcairn's Survey, Tirohanga	Witeria Tawhi Moka		Chief	M	Waiaua	50			11	4 <sup>th</sup>			AJHR 1872, C4, p13-14
1, Pitcairn's Survey, Tirohanga	Ranapia Uatuaho		Chief	M	Tirohanga	50			11	4 <sup>th</sup>			AJHR 1872, C4, p13-14
23, Blake's Survey, Otara	Ranapia Uatuaho		Chief	M	Ōpōtiki	50			11	4 <sup>th</sup>			AJHR 1872, C4, p13-14
	Piri Makarini		Native	M									
3, Pitcairn's Survey, Tirohanga, South Portion	Makarini		Native	M	Whakatane	30			11	4 <sup>th</sup>			AJHR 1872, C4, p14
Hokianga Island	Teira Haruru	Upokorehe	Chief	M	Ohiwa	13	2	12	13	4 <sup>th</sup> 6 <sup>th</sup>		N	AJHR 1872, C4, p14
	Hemi Kakitu <sup>612</sup>		Chief	M									
	Taitua Mokai		Native	M									
	Hemi Kuri		Native	M									
Hiwarau Block: - Bounded on the North by high water-mark in Ohiwa Harbour from the mouth of Nukuhou River to Punawai; on the East by a road surveyed from Punawai to the point where it first	Teira Haruru	Upokorehe	Chief	M	Ohiwa	1073			14	4 <sup>th</sup> 6 <sup>th</sup>		N	AJHR 1872, C4, p14
	Hemi Kaiti		Chief	M									
	Hoeroa		Native	M									
	Hemi Hamu		Native	M									
	Mita Tahanoke		Native	M									
	Iraia Kaiponi		Native	M									
	Hoani Akeake		Native	M									

<sup>612</sup> Hemi Kakitu (Kiripaka Kahu) is described as a chief of Tūhoe in Binney, *Encircled Lands*, p 82

strikes Nukuhou River; on the South and West by Nukuhou River.													
Bounded on the North-west by the sea from Waiohoata to Titoi Point; on the North-east by Torere Block; on the South-east by the confiscation boundary; and on the South-west by Opape Block	Wiremu Kingi Tutehuarangi	Ngaitai	Chief	M	Anawakino [Awaawakino]	2411 <sup>613</sup>			15	3 <sup>rd</sup> 4 <sup>th</sup> 6 <sup>th</sup>		Y	AJHR 1872, C4, p15
	Romana Tautari		Chief	M									
	Hemi Te Rua		Native	M									
	Kereama Tautahi		Native	M									
	Arapeta Putiki		Native	M									
	Hemi Kare Potata		Native	M									
	Wiremu Kepa Tuhorouta		Native	M									
	Henare Anururangi		Native	M									
Bounded on the West, the North, and the East by the River Otarā; on the South by a line 2931 links separating it from the Town Belt	Hira Te Popo	Ngatira	Chief	M	Opotiki	102			17	4 <sup>th</sup> 6 <sup>th</sup>		N	AJHR 1874, C3, p1
	Pera Makau		Native	M									
	Wharenuī		Native	M									
	Tuwhakia		Native	M									
	Maka Rangiihu		Native	M									
	Hane Tapatahi		Native	M									
	Mihaka Mataika		Native	M									
Torere	Wiremu Kingi Tutehuarangi	Ngaitai	Chief	M	Waiohoata and Hakuranui	9458			28			Y	AJHR 1874, C3, p8
	Hohepa Kaitahi		Native	M									
	Hoera Kahutia Te Rangi		Chief	M									
Simpson's Survey, Waioeka	Hira Te Popo	Ngatira	Chief	M	Opotiki	300			31	4 <sup>th</sup> 6 <sup>th</sup>			AJHR 1874, C3, p8
	Pera Makau		Native	M									
	Wharenuī		Native	M									
	Tuwhakia		Native	M									
	Maka Rangiihu		Native	M									
	Mihaka Mataika		Native	M									
	Hane Tapatahi		Native	M									
Simpson's Survey, Otarā	Tiwai Piahana		Chief	M	Opotiki	100			32				AJHR 1872, C4, p12

<sup>613</sup> This area remained liable to alteration by an ongoing survey by Simpson at the time of the 1872 AJHR publication



Simpson's Survey, Waioeka	Hana Arapeta		Native	F	Opotiki	15			32				AJHR 1872, C4, p12
Simpson's Survey, Waioeka	Mereana Hauauru		Native	F	Opotiki	40			32				AJHR 1872, C4, p12
Not surveyed	Mereana Hauauru		Native	F	Waiau	20			32				AJHR 1872, C4, p12
57, Waioeka Valley (Country Lot)	Rewiri te Rapata Moka / Rewiri Moka				Opotiki	50							AJHR 1867, A18, p5
Eastern extremity of Town Belt	Te Merimana / Meremana				Opotiki	25							1867, A18, p5
1, Opotiki Flat 6, Opotiki Flat, near Waioeka River (Country Lot)	Hohi Ngapuhi / Hoki Ngapuhi				Opotiki	100							1867, A18, p5
30, Military Township	Frederick Whitaker / F Whitaker				Opotiki	1							1867, A18, p5
31, Eastern portion, Worth's Survey - Parish no. not determined	Te Warihi	Ngai Tama			Opotiki	35							RDB vol 120, p 46289
	Ngaputa												
	Raima												
14, Northern portion, McGuire & Rolleston's Survey - Parish no. not determined	Mihi Terina	Ngati Rua			Opotiki	35							RDB vol 120, p 46289
9, Worth's Survey, Waioeka Valley 47, Burslem's Survey - Parish no. not determined, Waioeka Valley	Mary Davides				Opotiki	50							1867, A18, p5
						50							
47, Worth's Survey - Parish no. not determined,	Ritihia Ropiha				Opotiki	50							1867, A18, p5
7, North-west, Tirohanga	Tamati te Au				Opotiki	10							1867, A18, p5
76, Waiotahi	Joseph Kennedy				Opotiki	50							1867, A18, p5
Te Pukenui, Ohiwa	Hanauru Taipari					100							1867, A18, p5
277, Opotiki	Ngahiraka & others					0.25							1867, A18, p5
Paid May 1866	Mohi Wikitahi and others										120		1867, A18, p5
	Te Kiekie										30		1867, A18, p5

Not less than ¼ acre, nor more than ½ acre, in Whakatane Township, to secure graves of her relatives	Elizabeth Fulloon					TBC					150		1867, A18, p5
7, Civil Township 8, Civil Township Military Township, near Waitangi	Tiwai Piahana					0.25					50		1867, A18, p5
						0.25							
						5							
(Not Yet Selected)	Papa Kahawai										50		1867, A18, p5
Opotiki or elsewhere, (nearly arranged)	Timoti te Pokiwaho					12							1867, A18, p6
Waiawa [Waihua]; Manukatihiti, Waioeka Valley (Claimant has refused to make the selection, and is going to appeal to the Governor)	Mereana Hanau					25							1867, A18, p6
						40							
Opotiki; 2x Town allotment (Claimant absented herself before judgement was given and did not return)	Wakata					25							1867, A18, p6
						0.25							
						0.25							
Waiawa [Waihua] (I have endeavoured to arrange the selection of this)	Wi Karaka					30							1867, A18, p6
Waioeka Valley (Have not seen claimant since judgement was given)	Hoana Tunui					30							1867, A18, p6
Waioeka Valley; 1x Town allotment (Have not seen claimant since judgement was given)	Huhau te Waihapuranga					40							1867, A18, p6
						0.25							

Waimana (Have not seen claimant since judgement was given)	Henare Wakarongohau					40							1867, A18, p6
Waioeka Valley (Have had much trouble with this claimant who will not make a selection)	Mere Petere					40							1867, A18, p6
Opotiki (Have not seen claimant since judgement was given)	Watene Tuma					40							AJHR 1867, A18, p6
Waioeka Valley (Have not seen claimant since judgement was given)	Hana Arapeta					15							AJHR 1867, A18, p6
Waimana (Have not seen claimant since judgement was given)	Kiepa te Tua					25							AJHR 1867, A18, p6
Opape Reserve		Whakatohea				20,787							AJHR 1867, A18, p3 AJHR, 1871, F4, p31
<b>Total: 35,546.8 acres</b>												<b>Total: £400</b>	

As the Table in Figure 16 shows above, approximately 35,500 acres were returned to Māori within the Inquiry District. A definitive figure for how many acres were awarded to Māori within the Inquiry District is difficult to ascertain. Reasons for this difficulty include the fact that not all recipients awarded land were Māori (Frederick Whitaker for example), and not all Māori awarded lands were awarded under Māori names, Elizabeth Fulloon (Ngāti Awa, Tūhoe) for example, which creates some confusion.

A further difficulty is that the information available in the existing sources is incomplete or insufficient to accurately place the locations of many awarded lots. Other challenges include the use of geological features as reference points for the awarded lands, such as rivers, which have since changed in size or path, and the use of place names or incorrectly spelt place names which are not apparent (even on contemporary maps), or the use of common place names which have more than one possible location within the Bay of Plenty. Determining the geographical location of the awards is further complicated by the fact that the boundaries of the North-Eastern Bay of Plenty Inquiry District have not yet been finalised at the time of researching and writing this report.

It is equally difficult to ascertain an accurate figure for the division of the awarded land between iwi and hapū of the area. An accurate division is made seemingly impossible by the insufficient information provided in the documentation of awards. Specific iwi or hapū affiliation was not commonly provided in the detail of the awards. The reports provided to the House of Representatives and published in the *New Zealand Gazette* were typewritten from handwritten returns and contain transcription errors of names as well as spelling discrepancies of names, which causes confusion. Further, many lots were awarded to names common amongst Māori at the time. With no further identifying information, other than what may have been detailed about their case in the minute books of the Court, it is difficult – if not impossible – to differentiate between possible awardees. Any attempt to do this would require meticulous hapū knowledge. Claimants in the North-Eastern Bay of Plenty Inquiry may be able to provide further insight into the hapū affiliations of the awardees.

What is clear is that the vast majority of the 288,213 acres of land returned to Māori within the Bay of Plenty confiscation district did not fall in the North-Eastern Bay of Plenty Inquiry District as specified at the time of writing this report.<sup>614</sup> The GIS estimate of the area of the proposed Inquiry District is

---

<sup>614</sup> This number is from the total of 96,261 acres returned to 'Loyal Natives', the 104,952 acres to 'rebels', and the 87,000 acres to Te Arawa. J H H St John, 'Further Papers Relative to Confiscated Lands', 12 August 1873, AJHR, 1873, C-4B, pp 5-6. Accounting for the revised figures of the Sim Commission this would be closer to 317,000 acres. W A Wilson, V H Reed, W Cooper, Report on 'Confiscated Lands and Other Grievances', 29 June 1927, AJHR, 1928, G-7, p 21

303,590 acres, with a GIS estimated 152,715 acres located within the confiscated area (46 per cent).<sup>615</sup> If the approximately 35,500 acres in the table at Figure 16 above presents an accurate sample of the lands returned within the Inquiry District, then less than one-quarter of the lands confiscated within the Inquiry District were returned to Māori hands.

Within the Inquiry District, the majority of the land that was returned was returned as reserves for specific iwi or hapū and held in trust with a number of rangatira named as trustees. For example, the Ōpape Reserve awarded to Whakatōhea made up the bulk of this, comprising 20,787 acres of the approximate 35,500 acres. While Ngāitai at Tōrere were awarded 9,458 acres. In total this meant 30,245 acres out of approximately 35,500 acres returned were awarded as reserves to Whakatōhea and Ngāitai.

The lands awarded to Māori individuals (as opposed to iwi or hapū) consisted mainly of 50-acre lots in rural areas, such as Tirohanga, Otara, Waioeka and Waiaua, or smaller sections of around a quarter-acre in town allotments, including the military and commercial townships in Ōpōtiki.

In the North-Eastern Bay of Plenty Inquiry District, the hapū and iwi that received awards of land under trust in the 32 schedules provided to the House in 1874 (as detailed in the table at Figure 16) included:

- Ngāti Ira (Waioeka and Ōpōtiki, by Otara River)
- Ngāitai (Awaawakino, Waiohoata and Hakuranui)
- Whakatōhea (Ōpape)
- Ūpokorehe (Hokianga Island and Hiwarau in Ōhiwa)

These reserved lands appear to have all been within the Inquiry District, with the possible exception of the Ūpokorehe awards, which currently fall outside the final Inquiry District boundaries. For awards to individuals a hapū or iwi affiliation was not always indicated.

As shown in the table at Figure 16 above, schedule 9 was within the Inquiry District with lots 92 and 93 in the Commercial Township of Ōpōtiki, totalling two perches in each area. The lots were awarded to three claimants from Whakatōhea, namely Hira Te Popo, Topeora, and Mihaka Rangiaho.

Schedule 11 included five lots within Tirohanga and Otara awarded under the 4<sup>th</sup> clause of the Confiscated Lands Act 1872, as well as a number of lots outside the Inquiry District. Four of the five lots within the Inquiry District were under the Pitcairn Survey in Tirohanga. Of these, Rewiri Rangimatanuku (Lot 4), Wīteria Tawhi Moka (Lot 42), and Te Ranapia Uatuaho (Lot 1) each received 50 acres, while Pokanoa Awanui (Lot 29) received a slightly smaller section of 48 acres, 3 roods, and

---

<sup>615</sup> Therese Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5, p 53

37 perches. A further 50-acre lot in Otara (Lot 23) under Blake's Survey was awarded to both Ranapia Uatuaho and Piri Makarini.

Schedule 15 was within the Inquiry District and included 2,411 acres awarded under the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> clauses of the Confiscated Lands Act 1872. The 2,411-acre lot was located between the sea, Waiohoata, and Titoi Point, and the Tōrere and Ōpape blocks.<sup>616</sup> The lot was awarded in trust to Ngāitai under eight trustees, with a total of 173 named benefactors.<sup>617</sup> The land was alienable with the consent of the Governor in Council.

Similarly, schedule 17 included 102 acres awarded to Ngāti Ira in Ōpōtiki. Specifically, the block was 'bounded on the West, the North, and the East by the River Otara; on the South by a line 2931 link'. The Ngāti Ira lands were awarded inalienably under the 4<sup>th</sup> and 6<sup>th</sup> clauses of the Confiscated Lands Act. The award was made in trust, with seven named trustees including Hira Te Popo, Pera Makau, Wharenuī, Tuwhakia, Maka Rangihū, Hane Tapatahi, and Mihaka Mataika.<sup>618</sup>

As mentioned above, Ngāitai were awarded 9,458 acres of alienable land in the area of Waiohoata and Hakuranui, under trust, between the Tōrere and Ōpape blocks. This land was awarded with three named trustees including Wiremu Kīngi Tutehuarangi, Hohepa Kaitahi, and Hoera Kahutia Te Rangī.<sup>619</sup>

Schedule 31 included land awarded in Waioeka, surveyed by Simpson. The award was for 300 acres and was awarded to seven claimants of Ngāti Ira, including Hira Te Popo, Pera Makau, Wharenuī, Tuwhakia, Maka Rangihū, Hane Tapatahi, and Mihaka Mataika.<sup>620</sup> The land was awarded under the 4<sup>th</sup> and 6<sup>th</sup> clauses of the Confiscated Lands Act 1867. Gilling has noted that Hira Te Popo and Ngāti Ira had opposed Völkner's killing but still suffered the loss of their coastal pā as well as access to lands in the Waimana and Otara Valleys.<sup>621</sup>

Schedule 32 included eight separate lots across the Bay of Plenty district. Four of these lots were within the North-Eastern Bay of Plenty Inquiry District. Tiwai Piahana was awarded 100 acres at Otara. According to Gilling and Binney, Piahana had remained 'constantly loyal' since Völkner's time and was known to have acted as an informant for the government.<sup>622</sup>

---

<sup>616</sup> The 2411 acres was 'liable to alteration by present surveys by Simpson'. J A Wilson, 'Bay of Plenty District – Schedule of No. 15, 1872', 29 March 1872, AJHR, 1872, C-4, p 15

<sup>617</sup> NZ Gazette, 12 November 1874, pp 781-782

<sup>618</sup> J A Wilson, 'Reports on Settlements of Confiscated Lands', 26 February 1873, AJHR, 1874, C-3, p 1

<sup>619</sup> J A Wilson, 'Reports on Settlements of Confiscated Lands', 26 February 1873, AJHR, 1874, C-3, p 6

<sup>620</sup> J A Wilson, 'Reports on Settlements of Confiscated Lands', 26 February 1873, AJHR, 1874, C-3, p 8

<sup>621</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 387

<sup>622</sup> Gilling, 'Te Raupatu O Te Whakatohea', p 387; Binney, *Encircled Lands*, p 117

Also, under schedule 32, Hana Arapeta was awarded 15 acres at Waioeka. Mereana Hauauru was awarded 40 acres at Waioeka as well as 20 acres in Waiaua (as yet un-surveyed at the time of the 1874 report).<sup>623</sup> No clause was specified for this award.

Outside of the Inquiry District but awarded in trust to Ūpokorehe were schedules 13 and 14. These awards included inalienable reserves under the 4<sup>th</sup> and 6<sup>th</sup> clauses of the Confiscated Lands Act 1867, encompassing Hokianga Island (13 acres, 2 roods, 12 perches) and the Hiwarau Block (1,073 acres).<sup>624</sup> According to Walker, Hēmi Kakitū of Te Ūpokorehe was given rights to these lands despite joining Pai Mārire against the Crown after turning himself in and assisting in the pursuit of Te Kooti.<sup>625</sup>

Schedule 16, which is not included above, was regarding eel weirs rather than lands and provided specified 'Loyal Natives' and 'surrendered Rebels' with eel weirs at Awa Iti, Omeheu, Te Putere, Te Umukuri, Titingaroa, and Tarawera East. Whakatōhea do not appear to have been recipients of any of these eel weirs.<sup>626</sup>

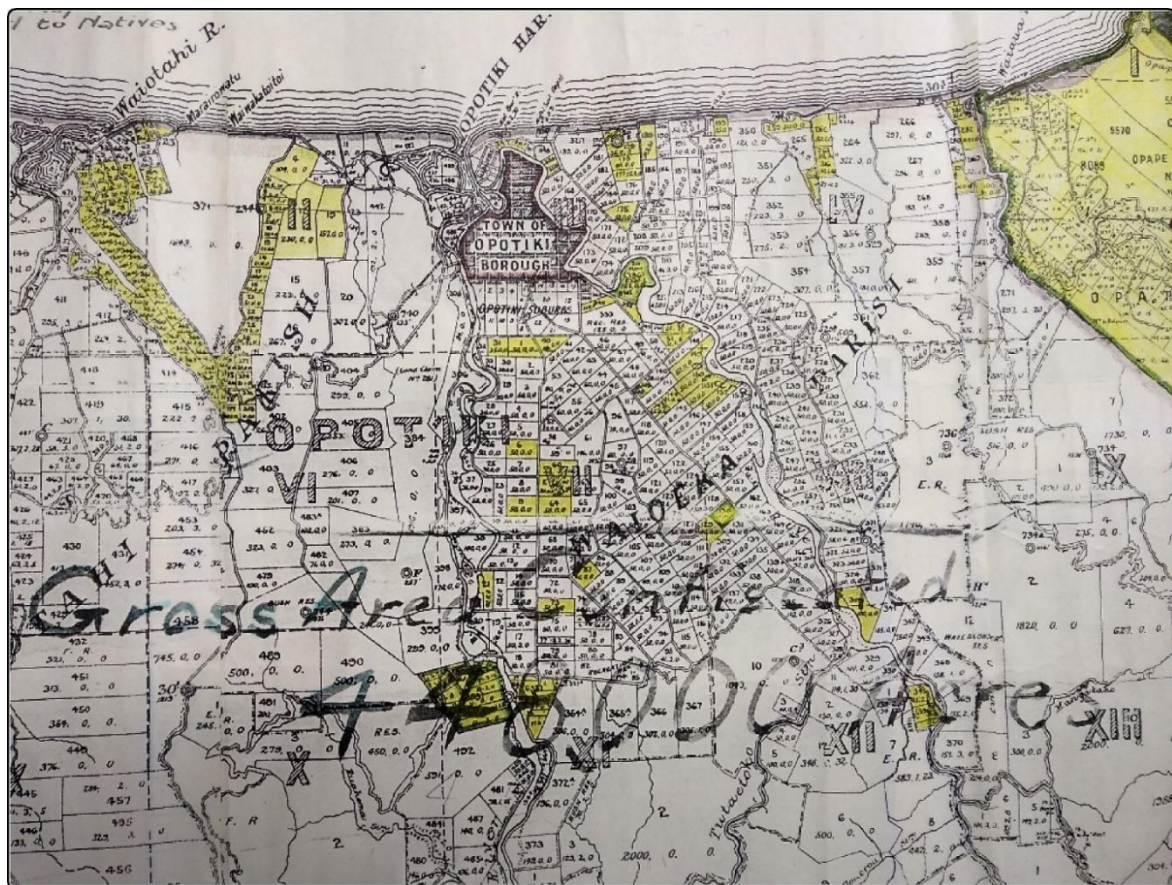


Figure 17: A map excerpt detailing some of the lands allocated (in yellow) to Whakatōhea and other iwi in the north-eastern Bay of Plenty<sup>627</sup>

<sup>623</sup> J A Wilson, 'Reports on Settlements of Confiscated Lands', 26 February 1873, AJHR 1874, C-3, p 9

<sup>624</sup> J A Wilson, 'Bay of Plenty District – Schedule of No. 13, 1872', 29 March 1872, AJHR, 1872, C-4, pp 13-14

<sup>625</sup> Walker, *Ōpōtiki-Mai-Tawhiti*, p 128

<sup>626</sup> J A Wilson, 'Bay of Plenty District – Schedule of No. 16, 1872', 29 March 1872, AJHR, 1872, C-4, p 16

<sup>627</sup> Maori Land Information Office map, MA 85/7/11, Noel Harris Collection

## 5.5 Chapter summary

As with confiscation, the New Zealand Settlements Act 1863 and its many amendments were the principal legislation behind the compensation process, which from 1866, saw some sections of land returned to the hands of Māori in the North-Eastern Bay of Plenty Inquiry District. It was this Act and its amendments which provided the authority for J A Wilson to make private compensation arrangements out-of-court from 1866, and the Compensation Court which sat in the Bay of Plenty through 1867, to investigate submitted claims and make awards of previously confiscated land to Māori. Significantly, the 1866 amendment in October of that year made all the decisions of the Court and the arrangements of Wilson 'absolutely valid' and incontestable, preventing any poorly served claimants from contesting the extent of their awarded land or failure to receive an award of land.

The Confiscated Lands Act 1867 extended the New Zealand Settlements Act 1863 and its amendments. Most significantly for the Inquiry District, it allowed reserves of land to be awarded to Māori from the confiscated lands and specific conditions to be attached to the awards of land.

The initial implementation of the legislation for compensation was not without errors. The proclaimed confiscation boundaries for the Bay of Plenty required amending after they were defined by inaccurate geological features. Then later, after questioning of its jurisdiction by Compensation Court Judges, a third proclamation was necessary to specifically define the area confiscated for military settlement.

Wilson's priority as Special Commissioner was to arrange military settlement as soon as possible in the Bay of Plenty District and to allocate land to Māori from the lands that remained. During 1866, Wilson researched the claims in the Bay of Plenty District whilst travelling the district and used this information to inform his awards where appropriate whilst maintaining the priority of military settlement.

There is scant record of Wilson's activities as Special Commissioner during 1866, or the out-of-court negotiations he undertook with rangatira which led to the establishment of eight Native Reserves for hapū and rangatira across the Bay of Plenty district. Only four of these reserves were within the North-Eastern Bay of Plenty Inquiry District. The most significant being the 20,787-acre Ōpape Reserve, which was awarded to the 'rebels' of the six identified hapū of Whakatōhea. Whakatōhea received another two reserves which encompassed awards to three rangatira who received 50 or 100-acre reserves each. Why they were selected over other rangatira and members of Whakatōhea is not revealed in the sources consulted. In addition, Ngāitai were awarded 9,458 acres at Tōrere. There were also reserves laid out for Ūpokorehe on Hokianga Island and Hiwarau in Ōhiwa, just outside the currently specified Inquiry District boundary. Due to the limitations of the source material consulted



for this report, there is little clarity regarding how the size, character or location of the award of reserves was determined by Special Commissioner J A Wilson during his out-of-court settlements.

Wilson's position as both Special Commissioner and Crown Agent compromised the independence of the Compensation Court process. As the Waitangi Tribunal's *The Ngāti Awa Raupatu Report* established, holding both positions allowed Wilson to exert an influence over the Court process which 'directly prejudiced both the claimants and the nature of the inquiry itself'.<sup>628</sup>

The Compensation Court was established to decide which claims were valid and to award successful claimants' sections of land, the exact location of which was later negotiated between the Crown Agent and the claimant or claimant's agent.

The Court sat four times between March and December 1867, in Ōpōtiki, Maketū, Whakatāne, and Te Awa o te Atua (Matatā).

There was difficulty finding an experienced Judge to preside over the Court. Initially, the inexperienced Judge Lyon was appointed, but the first sitting in Ōpōtiki was postponed and then Lyon chose not to attend when it did sit in March 1867, leading to his dismissal from the Court. The Ōpōtiki Compensation Court went ahead with Judge Mair presiding, later assisted by the inexperienced Judge Smith. Judge Mair would also preside over the Whakatāne and Te Awa o te Atua sittings. The short Maketū sitting was run by Judge Mackay.

From the limited record in the Court and judges' minutes and reports from Wilson, it is apparent that the Court faced some difficulties in its proceedings. There were difficulties running the Courts with many witnesses and claimants failing to appear, leading to many adjournments and the outright dismissal of cases. Several reasons were presented in official correspondence and in the minutes of the Court to explain these absences. These reasons included the ongoing hostilities in the region which many Māori were engaged in and which prohibited safe travel. Many Māori claimants also had to attend harvests.

During the Ōpōtiki session the legality of the Crown's confiscation in the Bay of Plenty District was questioned. The specific legal requirement, which justified confiscation within the legislation, was that lands were needed and would be used for military settlement to keep the region safe. It was not apparent that this was the case in the Bay of Plenty. To ensure the Compensation Court did not act outside the law, Judge Smith decided that the Court would only award successful claimants an amount

---

<sup>628</sup> Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, p 83

of land and would leave the Crown Agent to settle the location of land with the claimants or their agent.

In the Maketū Compensation Court, Judge Mackay settled the issue of future outstanding claims against land already allocated to military settlement going forward. Judge Mackay declared that land already allocated to military settlement by Wilson (as Special Commissioner) could not be returned by the Compensation Court to claimants. Despite having their claims to the specific lands upheld, the successful claimants would be awarded land elsewhere. As with the Ōpōtiki hearing, the location was to be determined with Wilson as Crown Agent.

Another issue raised in the Court was that of the eligibility of ‘rebels’ wives. The eligibility of women to compensation whose husbands had been ‘rebels’ was discussed in the Te Awa o te Atua sitting of the Court. It being established, after contestation from Wilson, that women who were otherwise eligible for compensation would maintain their eligibility as long as they themselves did not actively partake or support the ‘rebellion’.

Due to limited notes on the record it is difficult to ascertain how Judges’ decisions were made, how witness testimony was balanced and weighted, or how much say claimants were able to exercise in negotiating their awarded land with Wilson. However, most claims that were dismissed were due to claimants admitting ‘rebellion’, failing to appear in court, or having submitted duplicate claims. Under the 1866 amendment to the New Zealand Settlements Acts 1863, claimants left unsatisfied by the outcome were left without an avenue to contest the decision.

As Crown Agent, Wilson brought Whakatōhea witnesses from Ōpōtiki and elsewhere to provide evidence in Court in defence of claims to customary Whakatōhea lands from Māori of hapū more commonly associated with lands further afield. Only a small number of these claims from outside hapū were upheld, and were subsequently awarded monetary payments or land elsewhere, allowing lands around Ōpōtiki to be prioritised for military settlement and the claimants of Whakatōhea.

Both the out-of-court negotiations and four Compensation Court sittings were carried out during ongoing and significant military unrest in the Bay of Plenty, which inhibited both claimants and witnesses availability and access to the Court – as well as the accurate and timely surveying of lands for settlement and award through compensation.

Considering the complexity of many of the cases, the Compensation Court processed many claims in a relatively small period of time. As Crown Agent, Wilson complained of having insufficient timing and funds to properly prepare witnesses and evidence. Preparing for Court in terms of time and cost is likely to have been even more difficult for claimants.

The awards made by the Compensation Courts did not specify the exact lot of land and required the claimants to negotiate with Wilson (as Crown Agent) for the specific lot. For various reasons, for many successful claimants these negotiations would drag on until 1872. Some would have to wait even longer to actually have their land title formalised, as late as 1878 for some.

Of the GIS estimated 303,590 acres that make up the North-Eastern Bay of Plenty Inquiry District it is estimated that 152,715 acres were located within the Bay of Plenty confiscation district. For reasons detailed above, it is difficult to ascertain an accurate figure for how many acres returned through the compensation process fell within the Inquiry District. The Table in Figure 16 (above) collates the awards that appear to fall within the Inquiry District, and totals about 35,500 acres. This suggests that as little as one-quarter of confiscated Māori land in total was returned through the compensation process.

## Chapter Six: Summary and Conclusion

This report has discussed how and why Māori land was confiscated in the north-eastern Bay of Plenty in 1866 and the subsequent process and outcomes in which compensation was awarded up to 1874. The report begins by establishing Whakatōhea and Ūpokorehe as the main tribal groupings impacted by raupatu in the area in which the Bay of Plenty confiscation boundary overlaps the current North-Eastern Bay of Plenty Inquiry District.<sup>629</sup>

The report then describes some of the key historical context for Whakatōhea and Ūpokorehe up to 2 March 1865 when Reverend Völkner was killed. Specifically discussing their ongoing animosity with neighbouring Te Arawa, and their uptake of Christianity and prosperous adaptation to the Pākehā settler economy through the 1840s and 1850s and how this was checked by the events of the Taranaki and Waikato Wars (1860-1864). It also discusses the impact of these hostilities and the arrival of Pai Mārire (Hauhau) emissaries to the Bay of Plenty region on local Māori and how these events led to the killing of Reverend Völkner and consequently the occupation of Ōpōtiki by colonial forces in September that year. It also details the actions of this occupying colonial force and how it contributed to a loss of prosperity for north-eastern Bay of Plenty Māori. The report goes on to discuss the New Zealand Settlements Act 1863 and its amendments and how this legislation was used to confiscate lands of 'rebel' Māori in the north-eastern Bay of Plenty, and the subsequent process and outcomes of compensation awarded to those considered eligible for private arrangements by Special Commissioner J A Wilson or the Compensation Court.

Reverend Völkner was killed in Ōpōtiki by local Whakatōhea and visiting Pai Mārire adherents from various iwi including Te Arawa, Ngāti Awa, and Taranaki. The exact details of Völkner's death including who was involved and why he was killed remain murky, however some of the more prevalent motivations were intertwined with the hostilities of the Taranaki and Waikato Wars.

The hostilities in Taranaki began in late 1859 and by 1863 had stretched into the Waikato disrupting much of the middle of the North Island through the early to mid-1860s. These hostilities and the resulting shipping blockades and reduction of market and labour, as well as an outbreak of disease, detrimentally impacted the prosperity Whakatōhea and Ūpokorehe had built over the previous

---

<sup>629</sup> Figure 1; Figure 2; Therese Crocker, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5, p 50; Mikaere, Buddy, 'Exploratory Report to the Waitangi Tribunal an Historical Account of the Confiscation of land in the Opotiki District' (commissioned research report, Wellington: Waitangi Tribunal, 1991), map 1; Te Hoeroa Horokai and Heremia Hoera, 14 July 1920, evidence before the Opotiki Native Land Claims Commission 1921 in RDB, vol 47, pp 18510-13; C Jeff testimony, 7 March 1867, Minutes of the Opotiki Compensation Court in RDB, vol 120, p 46063

decade or so. Although they still retained much of their material wealth established in more prosperous times, there was an increased despondency among their people.

Some Whakatōhea pledged an allegiance to the Kīngitanga in early 1864 and joined with likeminded iwi in a Tai Rāwhiti taua intending to reinforce Kīngitanga forces in the Waikato. The taua was blocked by Te Arawa, who objected to them crossing their lands enroute, culminating in the Battle of Kaokaoroa in late April 1864. The taua was defeated by Te Arawa in battle. In the aftermath, Te Āporotanga, an ariki of Whakatōhea (Ngāti Rua) was captured and taken prisoner by Te Arawa and executed as utu for the killing of Tohi Te Ururangi and other historical grievances by Whakatōhea against Te Arawa.

Whakatōhea came to resent Reverend Völkner for his reluctance to condemn the execution of Te Āporotanga. Further, the iwi had begun to distrust Völkner as he was known to be passing intelligence of their movements and allegiances to the colonial government.

The Taranaki Wars had also fomented the rise of Pai Mārire, a religious movement which mixed traditional Māori and Christian faiths. Although its founder Te Ūa Haumene preached peace and sought to unite all Māori, Pai Mārire adherents began making attacks on soldiers and other representatives of the colonial state in 1864. When emissaries were sent out in an attempt to unite all Māori under Pai Mārire, Kereopa Te Rau (Ngāti Rangiwēhewēhi, Te Arawa) with Patara Te Raukauri (Taranaki) were sent to the Bay of Plenty.

It is well established that Kereopa held a strong desire to carry out utu against Anglican missionaries after Bishop Selwyn was implicated in supplying intelligence to the colonial Government. In February 1864, intelligence from Selwyn was used during the attack on Rangiaowhia in which members of Kereopa's family were killed. Te Arawa were traditional enemies of Whakatōhea and Ūpokorehe. As a member of Te Arawa, Kereopa's desire for utu will have been compounded by this rivalry and by the deaths of his kinsmen at the hands of Whakatōhea at Kaokaoroa.

Historians have suggested that a 'dispirited' Whakatōhea at this time, reeling from war, a failing economy, disease, and a newfound distrust for Völkner (one of their spiritual leaders) were especially susceptible to the supposed fervour of the Pai Mārire message. Kereopa and a group of Whakatōhea were involved in the hanging of Völkner upon his return to Ōpōtiki from Auckland in early March 1865. Only a small number of Whakatōhea were involved in the execution with many disapproving of the killing. Indeed, the vast majority took no part in it. The decision to kill Völkner was not a Whakatōhea decision but rather an incident that arose hastily out of this particular set of circumstances. The killing

of Völkner and the decapitation of his body and general mistreatment of his corpse were detailed in local newspapers and caused outrage and calls for action among the Pākehā public.

In July 1865, James Fulloon, was killed aboard his vessel in Whakatāne Harbour while investigating the whereabouts of Kereopa and others suspected of Völkner's murder. The killing of Fulloon (as a government official) and some of the crew of the *Kate* by Pai Mārire adherents and their Ngāti Awa and Te Whānau-ā-Apanui affiliates, caused further outrage among the Pākehā public and greater pressure on the colonial government to take steps towards stamping out their 'subversion' along the East Coast.

The Waikato and Taranaki Wars also wielded a more direct influence on the arrival of colonial forces in Ōpōtiki in September 1865. Attempts to quash 'rebellion' in these regions had led to the introduction of the New Zealand Settlements Act in 1863 and its later amendments. The cost of putting down 'rebellion' in these areas for the colonial government had resulted in a war loan. The plan to pay back the loan involved the confiscation of lands and the award of said confiscated lands to military settlers as payment for their service. In addition, some of the land was to be sold to raise funds to repay the war loans. This process was facilitated by the New Zealand Settlements Acts 1863 and amendments which are discussed further below. This meant that when Māori in the Bay of Plenty were considered to be subverting colonial authority (becoming involved in the deaths of Völkner and Fulloon as clergy and government agents, for example), the legislation already existed to facilitate their suppression through the confiscation of lands and placement of military settlers upon it. The legislation just needed to be implemented.

The confiscation of lands in itself was also driven by the desire of settlers for lands. The settler desire for lands was a major driver of Māori 'rebellion' in the first place, as seen in the events which unfolded in Taranaki and the Waikato. Much of the lands around the north-eastern Bay of Plenty were known to be fertile and suitable for European-style settlement and farming. With access to a port and inland communication routes, the area was desirable to Pākehā who were pressuring the government and Māori for more land to settle. All that was needed to implement the confiscation of land under the New Zealand Settlements Act 1863 was for the Governor to identify that 'rebellion' had occurred in the region and declare the associated area a District of Crown Lands, a 'confiscation district'.

However, in early September 1865, just a few days before the colonial forces left Wellington for Ōpōtiki, a Proclamation of Peace was declared. The proclamation called an end to the Waikato and Taranaki Wars, pardoned all those who had taken up arms against the authority of the Crown, and announced that no further land would be confiscated for these actions that had taken place prior to this date.

This amnesty specifically excluded those involved in several murders, including those of Völkner and Fulloon and his crew. It stated that an expedition would be sent to the Bay of Plenty to arrest those suspected of these murders. This expedition of colonial forces arrived in Ōpōtiki just a few days later on 8 September 1865. The proclamation warned that if the suspects were not given up, or if iwi attempted to protect the suspects, the Governor would confiscate their lands under the New Zealand Settlements Acts. Both Ngāti Rua and Ngāti Ira, hapū which evidence suggests had no part in the murders and who may have outright opposed the action, were equally subject to this proclamation with the other hapū of Whakatōhea and Ūpokorehe.

A proclamation of martial law over the districts of Ōpōtiki and Whakatāne was also gazetted at the same time. Martial law provided the Commander of the Military Forces with summary authority and allowed those suspected of the killing of Völkner and Fulloon and those suspected of aiding and abetting them to be tried by courts-martial.

On 8 September 1865, more than 500 colonial troops arrived in a flotilla of vessels in the Ōpōtiki Harbour. With several settlements of different hapū, Ōpōtiki Harbour was a hub for Whakatōhea, Ūpokorehe and other Māori including some Pai Mārire adherents at this time. Just three days after the gazette of the proclamation of peace and martial law, those Whakatōhea and other Māori on shore remained unaware of the reason for the forces' sudden appearance or their terms of engagement.

No obvious attempts were made to identify suspects, individual guilt, or to communicate or negotiate for the murder suspects to be turned over. There was an assumption under martial law that all of Whakatōhea (including Ūpokorehe by government definition) were guilty of Völkner's murder – with few exceptions Ūpokorehe and the hapū and individuals of Whakatōhea were treated as mutually culpable 'rebels'.

Most of the settlements were abandoned as the colonial forces began landing, with indiscriminate shooting and shelling of villages. The hapū mostly fled to the hinterland, with less than one hundred (likely of Ngāti Ira) remaining to offer some resistance, before withdrawing themselves to pā at the entrance of the Waioeka Gorge.

The material wealth accumulated in more prosperous times by Whakatōhea and Ūpokorehe was thoroughly looted from the abandoned settlements. Poorly supplied colonial troops pillaged to feed themselves, as well as for personal gain. What was unwanted was destroyed in a scorched-earth type practice. Horses were commandeered for the yeomanry cavalry and branded by the Government. Later, wild cattle (the remnants of the herds of local Māori) were also rounded up alongside machinery

from a destroyed flour mill and sold to the benefit of the government. Pākōwhai village was commandeered entirely and reinforced as the base of the colonial forces, with Völkner's church serving as a redoubt. From here, colonial forces pursued the different hapū of Whakatōhea, Ūpokorehe, and Pai Mārire adherents inland, looting and razing settlements and pā as they progressed. The actions of colonial troops was later legitimised by the Indemnity Act 1866.

The first evidence of the terms of engagement of the colonial forces being shared with local Māori was not until 17 September 1865, some nine days after colonial forces had begun landing and indiscriminately attacking local Māori.

Between 4 and 6 October 1865, there was a substantial stand by Ngāti Ira and Ngāi Tama (Tūhoe) at three pā, including Te Tarata and Te Puia. The defeat for Whakatōhea and Pai Mārie adherents was substantial. Ranginui Walker claims it was at this point that the iwi realised that resistance was futile and large groups began to surrender. Many of those that surrendered chose to assist the colonial forces in pursuit of those remaining at large, or to act as intermediaries between the groups.

However, small groups of Whakatōhea adherents of Pai Mārire remained at large with the others, including Kereopa, who was wanted for Völkner's murder. Some Ngāti Ira under Hira Te Popo, and Ngāi Tama (Tūhoe) under Tamaikowhā continued their resistance over this time. These groups continued to resist and were involved in a number of smaller scale skirmishes with colonial troops and volunteers in the years that followed.

There is no evidence of Whakatōhea leading offensive attacks against colonial forces prior to confiscation.

Treatment of those who surrendered to the colonial forces varied depending on the timing of their surrender and the perceived guilt of the individuals. Only those suspected of Völkner's murder were detained, meaning the vast majority were released.

Some of those rangatira that brought their people in to surrender did so in the hopes the Government would resist inflicting further punishment, including land confiscation, upon them.

Those who surrendered were made to pledge allegiance to the Crown. No evidence was found during the research for this report of Māori surrendering but refusing to take the pledge. As Māori came forward to surrender, the pā and kainga they left were systematically destroyed by colonial forces. This meant most were left without shelter and often with minimal supplies. Under the watchful eye of troops, they were permitted areas to rebuild some shelter and crops. However, by May 1866, all of the surrendered Whakatōhea – their lands now confiscated – were removed to the Ōpape Reserve. This is discussed further below.



Amongst the waves of captured and surrendering groups who came in during the first six weeks or so of hostilities in Ōpōtiki were at least four of those suspected of Völkner's murder. Mokomoko (Ngāti Patu, Ūpokorehe), Heremita Kahūpaea (Ūpokorehe), Hakaraia Te Rāhui (Ngāti Ira), and Paora Tai were detained in Ōpōtiki awaiting a courts-martial. Kereopa Te Rau would remain at large.

Prisoners suspected of the murders of Fulloon and his crew were also brought from Whakatāne for the courts-martial which was held in Ōpōtiki over the last half of November 1865. Although many of the suspects were found guilty and sentenced to death, the Attorney General decided the case should be tried in a civil court and the courts-martial would not be recognised in law to prevent any claims of 'double jeopardy'.

In February 1866, the murder suspects were sent to Auckland to have their cases heard by the Supreme Court. They were now also accompanied by Penetito (Ngāti Awa). The now five charged with Völkner's murder were tried together. Paora was acquitted. The remainder were sentenced to death. However, Penetito had his sentence commuted as he was just 19 years old and received just one year of penal servitude. On 17 May 1866, Mokomoko, Heremita, and Hakaraia were hanged at Mount Eden Gaol.

Kereopa remained at large until 1871, he too was tried for Völkner's murder, and found guilty. He was executed in 1872.

The relative prosperity which Whakatōhea and Ūpokorehe were able to build was checked by the unrest of war in Taranaki and the Waikato and an outbreak of disease. The material wealth which they had accrued during the earlier economic growth of the 1850s and early 1860s was destroyed or taken by the colonial forces who drove them off the land, to the benefit of individual soldiers and officers and the colonial government.

Despite offering minimal resistance and withdrawing where possible, Whakatōhea and Ūpokorehe suffered substantial casualties for small iwi during the landing, occupation, and pursuit of colonial forces. Whakatōhea (including Ūpokorehe) lost 58 members in the fighting that occurred, which according to Wilson's census of the iwi the following year in 1866, would have amounted to around ten per cent of the iwi's total population. The loss of such a significant number, likely to have included many of the iwi's fighting fittest, rangatira, and future rangatira, would have a decimating impact on the physical strength and leadership of the hapū and iwi at one of the most tumultuous times of change, regrouping, and hardship.

Whakatōhea's response to the landing of the colonial force in September 1865 and their indiscriminate shooting and shelling shows they were merely attempting to defend themselves and

their property. However, the Governor was sufficiently 'satisfied' that iwi in the region had been 'engaged in rebellion'. On 17 January 1866 the Bay of Plenty District was defined, and all lands within it declared confiscated under the New Zealand Settlements Act 1863. Unlike in other districts, this meant the immediate confiscation of the entire district's lands for settlements, rather than just certain areas within it. By October 1866, an amendment to the New Zealand Settlements Act meant these actions and all those made under the New Zealand Settlements Act were made 'absolutely valid' and incontestable in court.

Due to inaccuracies, the initial boundaries of the confiscated district were later redefined. However, it consisted of approximately 440,000 acres (later recalculated to 448,000 acres by the Sim Commission in 1928). A GIS estimate of the land confiscated within the North-Eastern Bay of Plenty Inquiry District indicates approximately 152,715 acres of land were confiscated. The vast majority, if not all of these lands, had been occupied by Whakatōhea and Ūpokorehe.

The amount of land taken exceeded the minimum necessary for achieving the stated purpose of the New Zealand Settlements Act. Namely, what was sufficient for enough military settlers to protect themselves and preserve the peace of the district. Military settlers were awarded approximately 23,461 acres. With more than half of these lands remaining unoccupied or abandoned by 1873, there was hardly an indication the lands had been required. This had earlier been pointed out by Judge Smith.

Authorities were aware that not all Whakatōhea or Ūpokorehe were aligned with Pai Mārire or the Kīngitanga or could be implicated in the killing of Völkner. Following the amnesty of the peace proclamation, only those actions from September 1865 could be considered as 'rebellion'. The confiscation of such a large amount of land suggests the Governor held Whakatōhea (Ngāti Awa and Tūhoe, among others) accountable for not surrendering Völkner's (and Fulloon and his crew's) suspected murderers. In Ōpōtiki no communications were made to explain terms before colonial forces attacked villages and Māori indiscriminately, without consideration for individual guilt. There was no allowance provided for the suspects to be surrendered before attacks were made.

As best as can be determined from the limited record that remains, the way confiscation was implemented involved the immediate confiscation of all the lands within the defined Bay of Plenty District. However, a survey of all lands was still required. It fell to J A Wilson, from early 1866, as Special Commissioner of the Bay of Plenty to arrange all surveying and negotiate the 'ceding' of all relevant lands from hapū and iwi of the entire district, not just those perceived or proven to be guilty of 'rebellion'. The idea was that all lands would be taken by the Crown and some of this land – in practice most often the poorer quality lands – would be returned to Māori under individualised titles, or for

the 'rebels' largely as reserves. However, progress with surveying the district was slow due to ongoing hostilities with some small Pai Mārire groups. These hostilities included direct attacks on government surveyors at least one of which led to the killing of two surveyors.

Significantly, confiscation separated Whakatōhea and Ūpokorehe from the fertile plains on which they had managed to build prosperity in previous decades. Social and economic unrest and disease had stalled their progress previously, the occupying colonial forces had looted and destroyed their accrued material wealth, and now confiscation of their foundational lands provided the death knell for their capacity to rebuild.

Inland, the loss of traditional lands to confiscation also marked the loss of many customary food gathering locations, as well as the loss of many urupā and other cultural sites of significance.

The area that was confiscated stretched the length of the coastline within the Inquiry District. Most, if not all, of this coastline was utilised by the hapū of Whakatōhea and Ūpokorehe to gather kaimoana to sustain themselves, to trade, and manaaki visitors. This expanse of coastline consisted of most, if not all, of their total coastline.

The New Zealand Settlements Act 1863 also provided for compensation to be awarded to all 'loyal' Māori and 'surrendered rebels' who had claims to confiscated lands. Māori were to send their claims to the Colonial Secretary, who would provide them to a Compensation Court to decide the validity of their claims and determine an amount of land to be issued. The claimant, or a representative, would then have to agree upon the piece of land to be issued with J A Wilson, acting on behalf of the government.

Prior to the four sittings of the Bay of Plenty Compensation Court in 1867, Special Commissioner J A Wilson, began researching claims and negotiating with rangatira and other claimants within the confiscated district to agree upon compensation terms. The Waitangi Tribunal's Ngāti Awa report suggests such negotiations were intended to bypass the Compensation Court process and provide the colonial government with more control over the allocation process than would otherwise have been the case in the hands of the judiciary. There is little record of how Wilson decided how much land or the location of land that claimants would be compensated with. It appears that these out-of-court agreements still relied upon the Compensation Court 'rubber-stamping' them. Wilson would also assert some further control over judicial proceedings as the Crown Agent during the Compensation Court proceedings, posing a possible conflict of interest.

From October 1867, it was legislated that reserves could be provided to 'friendly Natives' and 'surrendered rebels', and that conditions could be applied to awards. This appears to have been

passed to legitimise some of the private compensation negotiations arranged by Wilson, including the Ōpape Reserve which had been occupied by 'surrendered' Whakatōhea since May 1866.

The four sittings of the Court were held in Ōpōtiki, Maketū, Whakatāne, and Te Awa o te Atua (Matatā) through 1867. The Courts were run by a small number of Judges, relatively inexperienced in the technicalities of such Courts. Māori claimants and witnesses experienced difficulties attending due to the sporadic hostilities in the region, the timing of sittings during communal harvests, and the often remoteness of sitting from their place of residence.

The New Zealand Settlements Acts Amendment Act 1866 was passed in early October of that year, after some of Wilson's private compensation negotiations but before the Compensation Court had sat in the Bay of Plenty. The Act retrospectively made all of the implemented settlements legislation and all of Wilson's negotiations 'absolutely valid' and incontestable in Court. It also covered the decisions of the Compensation Court. It meant too that Māori lost their right to object to how the New Zealand Settlements Act 1863 and its amendments were executed in the Bay of Plenty, including their right to dispute the outcome of their compensation in Court.

The Confiscated Lands Act 1867 allowed the Governor to decide on awards of land over and above those of the Courts. Therefore, it is possible that petitioning may have proved fruitful for those inclined, but no evidence of this was uncovered during the course of research conducted for this report.

The other method of protest available to claimants unhappy with their compensation award was to refuse to settle with Wilson on the piece of land to be allocated to them. A large number of claims awarded by the Compensation Courts remained unsettled in the early 1870s when Wilson was redeployed to finalise them. The exact details of these claims or why they remained outstanding remains unclear.

It is difficult to ascertain an accurate figure for how many acres of land within the Inquiry District were awarded as compensation. A table has been prepared from data provided in schedules of awards of land prepared by Wilson between 1867 and 1874. This table (Figure 16) shows that approximately 35,500 acres of lands were awarded as compensation in the North-Eastern Bay of Plenty Inquiry District or to Māori associated with the Inquiry District.

What is clear is that the bulk of the awarded lands were issued as reserves and arranged by Wilson during his private compensation negotiations. Whakatōhea received the largest reserve at Ōpape, with at least 20,787 acres. The reserve was awarded to 'surrendered' Whakatōhea. Almost the entire iwi was expected to sustain themselves upon lands known to be of poor quality and solely within an

area previously occupied by just one hapū, Ngāti Rua. The total coastline returned to Whakatōhea was a mere fraction of that which they had occupied previously and would have inhibited the gathering of kaimoana which they utilised for sustenance and trade. An absence of both fertile lands and coastline would inhibit Whakatōhea's attempts to rebuild their earlier prosperity.

Ūpokorehe, perceived to be part of Whakatōhea by the government, also shared rights at Ōpape. Additionally, the 'loyal' and 'surrendered rebels' of Ūpokorehe received just over 1,000 acres of land at Hokianga Island and Hiwarau for 48 and 66 benefactors respectively. These were located at Ōhiwa Harbour, just outside the Inquiry District.<sup>630</sup> The Ngāti Ira hapū of Whakatōhea were also awarded two sections in trust around Ōpōtiki with 64 named benefactors. The first section was for 300 acres, the second was for 102 acres. Ngāitai received two substantial awards in trust of 9,458 acres for 150 benefactors at Waiohoata and Hakuranui (Tōrere) and 2,411 acres for 173 benefactors at Awaawakino.

Awards from the Compensation Court generally involved smaller lots of land and were awarded to rangatira and other named individuals specifically. Some rangatira were issued small 0.25 to 1 acre town lots, or as much as 100 acres rurally. Most rural awards for individuals though were for 15 to 50 acre lots.

It is estimated that as little as one-quarter of the Māori land confiscated in the North-Eastern Bay of Plenty Inquiry District under the New Zealand Settlements Act 1863 and its amendments was returned through the compensation process between 1865 and 1874. Through the confiscation process, and the limited compensation afforded to Māori, the best lands to occupy and farm in the area were reallocated by the colonial government to military and European settlers and largely lost to Māori hands forever.

---

<sup>630</sup> See Figures 10 & 11

# Bibliography

Archives New Zealand (Wellington)

*Department of Survey and Land Information, Head Office (AAFV)*

AAFV 97 27 / A74, Plan of the Confiscated Blocks in the Bay of Plenty District - Counties of Rotorua and Opotiki - Waikato Lands Office, March 1871 - Scale: One inch to one mile

AAFV 997 17 / A47, (Country and town lots), Opotiki, Whakatane to Waipono Rivers - Lots, military, native blocks - scale 40 chains:1 inch - Tracing, A. Sinclair, 1868

AAFV 997 18 / A101, Opotiki - Confiscated land - scale 8 miles:1 inch - Small lithograph, 1870?

AAFV 997 18 / [c] A52, Bay of Plenty, Waitahanui River to Opotiki - Lands abandoned, native reserves, military settlers, compensation awards - [small map, described as inset in register] - scale 6 miles:1 inch, 1866

*Army Department (AAYS)*

AAYS 8638 AD1 24/dy CD1865/2838, From: Major Brassey, Opotiki Date: 16 September 1865 Subject: Respecting terms on which the tribe under Kereopa will be allowed to surrender

AAYS 8638 AD1 25 / bm CD1865/3035, From: Major Brassey, Tauranga Date: 23 September 1865 Subject: Report of his proceedings and names of chiefs who have taken the oath of allegiance

AAYS 8638 AD1 26 / aj, CD1865/3219, From: Major Brassey, Opotiki Date: 4 October 1865 Subject: Report of proceedings at East Coast and covering copies of oath of allegiance taken by the Natives who have come in

AAYS 8638 AD1 27 / dj CD1865/3690, From: Major Stapp, Opotiki Date: 30 October 1865 Subject: Are the horses taken from the natives to be branded, requires 8 saddles to complete

AAYS 8638 AD1 27 / dm CD1865/3695, From: Major Stapp, Opotiki Date: 30 October 1865 Subject: With report on number of Hauhaus against us, about 120 will take the oath

AAYS 8638 AD1 27 / da CD1865/3676, From: Major Stapp, Opotiki Date: October 1865 Subject: Reporting surrender of about 100 Hauhaus to Major McDonnell

AAYS 8638 AD1 29 / dt CD1865/4324, From: Lieutenant Colonel Lyon, Opotiki Date: 4 December 1865 Subject: With letter received from Mr McLean relative to employing natives to attack Hau Hau position held by Patara

AAYS 8643 AD6 7 /, Colonial Defence Office - July 1865 - April 1866 - To Wellington, Wanganui, Opotiki and Napier

AAYS 8643 AD6 8 /, Colonial Defence Office - April-December - 1866

*Agent for the General Government, Auckland (ACFL)*

ACFL 8170 A1628 2 / y 3 September 1865, Inwards letters. 30 September 1865 - James Edward Fitzgerald - Settlement of land disputes, Waikato - Instructions relative to the compensation of loyal Maoris, whose lands had been confiscated

*Colonial Secretary's Office (ACGO)*

ACGO 8333 IA1 265 / [18] 1865/1339, From: D McLean, Superintendent, Napier To: Colonial Secretary, Wellington Date: 25 May 1865 Subject: Has Sent 49 copies of Photograph of "Patara"

ACGO 8333 IA1 289 / [37] 1867/1321, From: Daniel Pollen, Government Agent, Auckland To: Colonial Secretary, Wellington Date: 26 April 1867 Subject: Original report dated 18th April from Mr J A Wilson Special Commissioner at Opotiki

ACGO 8333 IA1 293 / [43] 1867/2771, From: Daniel Pollen, Government Agent, Auckland To: Colonial Secretary, Wellington Date: 17 August 1867 Subject: Copy of memo by Mr J A Wilson relative to Native Lands in the Bay of Plenty District [Enclosed: 1867/1454, 1866/2685 - Attached - NS1867/929]

ACGO 8333 IA1 293 / [13] 1867/2659, From: Daniel Pollen, Government Agent, Auckland To: Colonial Secretary, Wellington Date: 2 August 1867 Subject: Copy of Report from Mr Commissioner J A Wilson with reference to proceedings of the Compensation Court at Maketu

ACGO 8333 IA1 296 / [36] 1867/3589, From: Daniel Pollen, Government Agent, Auckland To: Colonial Secretary, Wellington Date: 29 October 1867 Subject: Letter from Mr J A Wilson (Crown Agent) requesting opinion of Attorney General as to whether the families of Rebel Natives are entitled to land

*Justice Department (ACGS)*

ACGS 16221 J22 2 / 3A, Records Relating to Murders - Various Maoris for murder of C.S. Volkner, James Falloon, Captain Pringle, seaman 'Ned' at Opotiki and Whakatane 1865 Includes applications for release of native convicts and correspondence relating thereto 1866-1868

ACGS 16221 J22 2 / 3B, Records Relating to Murders - Various Maoris for murder of C.S. Volkner, James Falloon, Captain Pringle, seaman 'Ned' at Opotiki and Whakatane 1865 Includes applications for release of native convicts and correspondence relating thereto 1866-1868

*Land Information New Zealand, Hamilton (BAPP)*

BAPP 24788 A1721 213 / b B43, Maori Roll Plan B43 - Opotiki County Map showing Boundaries of confiscated land, 1927

BAPP 24805 A1721 194 / b Red 21, Roll Plan Red 21 - Opotiki - Waimana and Waioeka Blocks, 1917

BAPP 24788 A1721 211 / b B40, Maori Roll Plan B40 - Plan of Country and Town lots, Opotiki, 1880

Alexander Turnbull Library (Wellington)

McLean Papers, MS-Papers-0032-0018

Smith Family Correspondence, MS-Papers-0388

Official publications

Appendices, Journals of the House of Representatives

Appendices, Journals of the Legislative Council

New Zealand Gazette

New Zealand Parliamentary Debates

Statutes of New Zealand

Newspapers

*Daily Southern Cross*

*Hawkes Bay Herald*

*Nelson Examiner and New Zealand Chronicle*

*New Zealand Herald*

*West Coast Times*

Legislation

New Zealand Settlements Act 1863

New Zealand Settlements Amendment Act 1864

New Zealand Settlements Amendment and Continuance Act 1865

Native Rights Act 1865

Outlying Districts Police Act 1865

New Zealand Settlements Acts Amendment Act 1866

Confiscated Lands Act 1867

Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013

Other

Waitangi Tribunal Division, *Raupatu Document Bank*, vols 3, 11, 12, 17, 47, 51, 119, 120, 121, 122, 123, 133 (Wellington: Department of Justice, 1989-1990)

Research reports and other material for Tribunal inquiries

Alexander, David, 'Ngā Take Taio: Environmental Issues Relevant to the Historical Relationship Between Whakatōhea Hapū and the Crown', (Wellington: Office of Treaty Settlements, 2017)

Bennion, Tom & Anita Miles, 'Research Report: Ngati Awa and Other Claims (Wai 46 & Others)' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, 1995)



Crocker, Therese, 'North-Eastern Bay of Plenty District Inquiry (Wai 1750): Pre-casebook Research Discussion Paper' (Wellington: Waitangi Tribunal, 2020), Wai 1750, 6.2.5

Edwards, Claude, 'Whakatohea Case Commentary in Preparation for Final Report to the Waitangi Tribunal', Wai 87, A2

Gilling, Bryan, 'Te Raupatu O Te Whakatohea: The Confiscation of Whakatohea Land 1865-866' (commissioned research report: Wellington, Treaty of Waitangi Policy Unit, Department of Justice, 1994), Wai 87, A3 (also Wai 46, C9)

Johnston, Ewan, 'Wai 203 & 339 Scoping Report' (commissioned research report: Wellington, Waitangi Tribunal, 2001)

Luiten, Jane, 'Historical Research Report for Te Runanga o Tuwharetoa Ki Kawerau' (commissioned research report: Te Runanga o Tuwharetoa Ki Kawerau, 1995)

Marr, Cathy, 'A Report Commissioned by the Waitangi Tribunal on the Background to the Tuwharetoa Ki Kawerau Raupatu Claim' (commissioned research report, Wellington: Waitangi Tribunal, 1991)

Mikaere, Buddy, 'Exploratory Report to the Waitangi Tribunal an Historical Account of the Confiscation of land in the Opotiki District' (commissioned research report, Wellington: Waitangi Tribunal, 1991), Wai 87, A1

Moko Mead, Hirini & Jeremy Gardiner, 'Te Kaupapa o te Raupatu i te Rohe o Ngati Awa: Ethnography of the Ngāti Awa Experience of Raupatu' (commissioned research report: Te Runanga o Ngati Awa, 1994), Wai 46, A18

Nightingale, Tony, 'The Commissioners of Tauranga Lands 1868-1886' (commissioned research report, Wellington: Waitangi Tribunal, 1996)

Te Runanga o Ngati Awa, 'The Trials', vol.1, report prepared by Ngati Awa for Waitangi Tribunal, 1994, Wai 46, C10

#### Waitangi Tribunal reports

Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999)

Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996)

Waitangi Tribunal, *Te Urewera*, vol 1 (Wellington: Legislation Direct, 2009)

#### Books

Anderson, Atholl, Judith Binney, & Aroha Harris, *Tangata Whenua* (Wellington: BWB, 2015)

Babbage, S Barton, *Hauhauism: An Episode in the Maori Wars, 1863-1866* (Wellington: Reed Publishing, 1937)

Belich, James, *The New Zealand Wars* (Auckland: Penguin Books, 1998)

Binney, Judith, *Encircled Lands: Te Urewera, 1820-1921* (Wellington: BWB, 2009)

Boast, Richard & Richard S Hill (eds.), *Raupatu: The Confiscation of Maori Land* (Wellington: VUP, 2009)

Brittan, S J, C W Grace & A V Grace (eds.), *A Pioneer Missionary Among the Maoris, 1850-1879: Being Letters and Journals of Thomas Samuel Grace* (Palmerston North: G H Bennett & Co, 1928)

Clark, Paul, *'Hauhau': The Pai Marire Search for Maori Identity* (Auckland: Auckland University Press, 1975)

CMS, *The Murder of the Rev C S Volkner, in New Zealand* (London: Church Missionary House, 1865)

Cowan, James, *The New Zealand Wars & The Pioneering Period, 1864-72*, vol 2 (Wellington: Government Printer, 1983),

Crosby, Ron, *Kūpapa: The Bitter Legacy of Māori Alliances With the Crown* (Auckland: Penguin, 2015)

Grace, David, *A Driven Man: Missionary Thomas Samuel Grace, 1815-1879: His Life and Letters* (Wellington: Ngaio Press, 2004)

Grace, Morgan S, *A Sketch of the New Zealand War* (London: Horace Marshall and Son, 1899)

Lyll, A C, *Whakatohea of Opotiki* (Wellington: Reed Books, 1979)

Mabbett, Barbara, *For Gallant Service Rendered: The Life & Times of Samuel Austin, NZ Cross, 1831-1903* (Wellington: Steele Roberts, 2012)

O'Malley, Vincent, *The Great War for New Zealand: Waikato 1800-2000* (Wellington: BWB, 2016)

O'Malley, Vincent, *The New Zealand Wars: Ngā Pakanga o Aotearoa* (Wellington: Bridget Williams Books, 2019)

Orange, Claudia, *An Illustrated History of the Treaty of Waitangi* (Wellington: BWB, 2004)

Walker, Ranginui, *Ōpōtiki-Mai-Tawhiti: Capital of Whakatōhea* (Auckland: Penguin, 2007)

#### Chapters and articles

Allen, Michael, 'An Illusory Power? Metropole, Colony and Land Confiscation', in Richard Boast & Richard Hill (eds.), *The Confiscation of Maori Land: Raupatu* (Wellington: VUW, 2009)

'Copy of Letter from Lieut. G.H. Stoaate R.N.: H.M.S. "Brisk", Napier, Saturday, Sept 20, 1865', *Historical Review (Whakatane)*, vol 20, no 2, 1972, pp 111-113

Gilling, Bryan, 'Raupatu: the Punitive Confiscation of Maori Land in the 1860s', in Richard Boast & Richard S Hill (eds.), *The Confiscation of Maori Land: Raupatu* (Wellington: VUP, 2009), pp 13-30

Head, Lyndsay, 'Te Ua Haumēne', *Dictionary of New Zealand Biography* (Wellington: Allen & Unwin, 1990)

Martin, John E, 'Refusal of Assent – A Hidden Element of Constitutional History in New Zealand', *VUW Law Review*, vol 41, no 1, pp 51-84

Parham, W T, 'Fulloon', *Dictionary of New Zealand Biography* (Wellington: Allen & Unwin, 1990) pp 61-64

Rorke, Jinty, 'Wilson, John Alexander', *Dictionary of New Zealand Biography* (Wellington: Allen & Unwin, 1993), pp 586-587

'Rev C. S. Volkner and the Tai Rawhiti Expedition, 1864', *Historical Review* (Whakatane and District Historical Society), vol 7, no 2, June 1959, pp 24-36

#### Websites

Māori Land Online, 'Block: Opape 28'; accessed 1 May 2020

Te Puni Kokiri, *Visualising Māori Land*, 'Opape 28',  
<https://whenuaviz.landcareresearch.co.nz/parcel/35641>; accessed 27 March 2020

Te Puni Kokiri, *Visualising Māori Land*, 'Waioeka Lot 435',  
<https://whenuaviz.landcareresearch.co.nz/parcel/38434>; accessed 27 March 2020

Te Kooti Whenua Maori, Maori Land Online  
<https://www.maorilandonline.govt.nz>; accessed 30 April 2020

# Appendices

## 8.1 Appendix 1: Native Reserves from Out-of-Court Negotiations

In June 1867, Wilson provided a return of the native reserves arranged to date. Included were eight reserves of various sizes, allocated to hapū, iwi, and chiefs of the Bay of Plenty. The details of the reserves were as follows:

*1. Opape Reserve, for Rebels only of the Whahatohea Tribe who have surrendered.*

Bounded on the North by the sea; on the East by a line from Point Titoi to Tarakeha, thence to Tawatihitihi, thence by a straight line running through Puketeko to the southern boundary of the confiscated block; on the West by Waiawa River from its mouth to the point where it passes between Makeo and Wakahau hills, thence by a line parallel with the eastern boundary from the point of Wakahau Hill to the southern boundary of the confiscated block; on the South by the boundary of the confiscated block.

*2. Hiwarau and Hokianga Reserves at Ohiwa, for surrendered Rebels and loyal Natives of the Upokorohe hapu.*

Bounded on the North by Ohiwa Harbour from the mouth of Nukuhou River to Punawai; on the East by the surveyed line from Punawai to the first point where the road strikes the Nukuhou Eiver; on the South and West by the Nukuhou River; also the Island of Hokianga in Ohiwa Harbour.

*3. Whakatane Reserve, for surrendered Rebels and loyal Natives of the Ngatipukeko and Ngatiawa Tribes.*

Bounded on the North by the sea; on the East by Whakatane River; on the South by southern boundary of the confiscated block; on the West by a line running from the coast South to Orakaureka, thence to Te Wakaeme, thence to Ruakinui, thence to Te Karaka, thence to Otupokai, thence to Owhaikawa, thence to Otarere, thence to Haukumukumu, thence to Okahaua, thence to Opotaka, thence to Te Ruangarara, thence to Te Takapau, thence by a line running South to the confiscated boundary.

(The Government has reserved the right to take from the Whakatane Reserve a portion of land equivalent to the compensation that may be awarded or granted on the eastern side of Whakatane River.)

*4. Reserve for Whahatohea Chief Te Ranapia Te Uatuahu.*

Lot 33 in Opotiki Valley, 50 acres.

*5. Reserves for Whakatohea Chiefs, on condition that they remain loyal to 1st January, 1870, when Crown Grants will be issued.*

Te Ranapia Te Uatuahu, lot 1, Tirohanga, 50 acres; Piri Te Makarini, lot 3, Tirohanga, 50 acres; Reweri Te Rangimatanuku, lot 4, Tirohanga, 50 acres. All the bearings in this Schedule are magnetic.

*7. Ohope Reserve, for surrendered Rebels and loyal Ngatiawa Natives of Ngatikokopu and Ngatiwharepaia, of which hapus Apanui, Wepiha, and Kepa Toihau are the Chiefs.*

Bounded on the North by the sea; on the East by a line running South from high-water mark on the sea coast to Te Horo at the mouth of Tauwhare River; on the South by Tauwhare River from Te Horo to the point where the Tauwhare recedes three-quarters of a mile from the sea, thence by a line running due West to the western boundary; on the West by a line running S.S.E. from high-water mark at Te Arakuri at the western end of Ohope beach, until it meets the southern boundary.

*8. Rangitaike Reserve, for surrendered Rebels and loyal Natives of Te Pahipoto Ngaitamaoke and other hapus.*

Bounded on the East by the Whakatane Reserve; on the South by the southern boundary line of the confiscated block; on the West by the Tarawera River from the southern boundary to Puke Tapu, thence by a straight line to Patuhoe, thence to Te Arero, thence to Otiore, thence to Te Pahauhaua-o-Rangipakokina, thence by the Rangitaike River to its first bend North of Te Teko, thence by a line bearing towards the hill Ohinetiwei to the western side of Titingaroa Swamp, thence by the edge of Titingaroa to Te Rakau Puhi; on the North by a line running from Te Rakau Puki to Oteukuhanga, thence to Mauawairihi, thence by a line bearing East to the western boundary of the Whakatane Reserve. All the bearings in this Schedule are magnetic.

*Schedule of Land given to the Arawa Tribe.*

Bounded on the North by the sea from the mouth of Waitahanui to the mouth of Te Awa-o-te-Atua; on the East by Te Awa-o-te-Atua and Tarawera Rivers; on the South by a portion of the southern boundary of the confiscated block, and on the West by the western boundary of the confiscated district.

The Government has reserved the right to lay out roads through all the Native Reserves in the Bay of Plenty District.<sup>631</sup>

---

<sup>631</sup> The reserves provided in this schedule were numbered, but were missing number 6, it is unclear whether number 6 should be the unnumbered reserve provided to Te Arawa, or whether an arranged reserve is in fact missing from the schedule. J A Wilson, 'Return of Reserves Made for Friendly Natives and Returned Rebels', 9 June 1867, AJHR, 1867, A-18, pp 1-6

8.2 Appendix 2: Research Commission

**OFFICIAL**

**Wai 1750, #2.3.1**

**IN THE WAITANGI TRIBUNAL**

Wai 1750

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the North-Eastern Bay of Plenty  
Inquiry

---

**MEMORANDUM-DIRECTIONS COMMISSIONING RESEARCH**

1 October 2019

---

## Introduction

1. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions John McLellan, Senior Research Analyst, to prepare a focussed overview research report concerning raupatu (land confiscation) as implemented in the North-Eastern Bay of Plenty inquiry district in the period 1865-1871.
2. The report will concentrate on raupatu in the North-Eastern Bay of Plenty inquiry district, with a focus on the period 1865-1871, and will address the following research issues:
  - (a) The immediate context of the dispatch of a government military contingent to the Bay of Plenty district on 8 September 1865, including the authority relied on and reasons for the use of the military, the nature and impact of the military actions of 1865, and the responses of iwi and hapū.
  - (b) The Crown treatment of those who surrendered to the military and those found guilty of the killing of Volkner; and impacts for iwi and hapū of this district, including on the local economy.
  - (c) The authority relied on for implementing raupatu in the Ōpōtiki district as proclaimed on 16 January 1866; the lands involved; and the government understandings of the iwi and hapū affected.
  - (d) The way raupatu/confiscation was implemented on the ground in this district, including the extent to which communities and individuals were affected, as far as can be identified from official records.
  - (e) The way compensation awards were expected to be implemented in this district, including any processes and protections, and rights to object to compensation arrangements provided for iwi and hapū subject to raupatu/confiscation.
  - (f) The authority and process by which the Compensation Court awards were made in this district as part of the raupatu/confiscation process and any other negotiations or arrangements made by John Wilson, Special Commissioner, or other officials in the district.
  - (g) The researcher will include brief background context, only insofar as it is relevant to raupatu/confiscation.
3. The commission will commence on 1 October 2019. A complete draft of the report is to be submitted by 30 April 2020 and will be circulated to claimants and the Crown for written comment, to be followed by quality assurance and final revision.
4. The commission ends on 29 May 2020, at which time one copy of the final report must be submitted to the Registrar for filing in unbound form, together with indexed copies of any supporting documents or transcripts. An electronic copy of the report and supporting documentation should also be provided in Word or PDF file format.
5. The report may be received as evidence and the author may be cross-examined on it.
6. The Registrar is to send copies of this direction to:
  - (a) John McLellan, Senior Research Analyst, Waitangi Tribunal Unit;
  - (b) Claimant counsel in the North-Eastern Bay of Plenty Inquiry;

- (c) Chief Historian, Waitangi Tribunal Unit;
- (d) Principal Research Analysts, Waitangi Tribunal Unit;
- (e) Manager Inquiry Facilitation, Waitangi Tribunal Unit;
- (f) Manager Research Services, Waitangi Tribunal Unit;
- (g) Inquiry Facilitator, Waitangi Tribunal Unit;
- (h) Solicitor General, Crown Law Office;
- (i) Director, Office of Treaty Settlements;
- (j) Chief Executive, Crown Forestry Rental Trust; and
- (k) Chief Executive, Te Puni Kōkiri.

**DATED** at Wellington this 1st day of October 2019



Judge M J Doogan  
Presiding Officer

**WAITANGI TRIBUNAL**



Tupuae Block to the River Mangoraka, thence by the said River Mangoraka to its source, thence by a straight line to the summit of Mount Egmont, and thence by a straight line to Parikino on the River Wanganui; on the south-east by the said River Wanganui from Parakino to the sea; and on the south-west by the sea from the mouth of the said River Wanganui to the mouth of the said River Hangatahua; excepting all lands within the said boundaries held by or under the Crown prior to the date of this Proclamation.

#### PROCLAMATION OF PEACE.

By His Excellency Sir GEORGE GREY, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand, and Vice-Admiral of the same, &c., &c., &c.

THE Governor announces to the Natives of New Zealand that the War which commenced at Oakura is at an end.

The Governor took up arms to protect the European settlements from destruction, and to punish those who refused to settle by peaceful means the difficulties which had arisen, but resorted to violence and plunged the country into war.

Upon those Tribes sufficient punishment has been inflicted. Their war parties have been beaten; their strongholds captured; and so much of their lands confiscated as was thought necessary to deter them from again appealing to arms.

The Governor has therefore shewn that he will not permit the peace of the Colony to be disturbed without inflicting severe chastisement on those who resist his authority.

The Governor hopes that the Natives will now have seen that resistance to the law is hopeless: he proclaims on behalf of the Queen, that all who up to the present time have been in arms against Her Majesty's authority will never be prosecuted for past offences, excepting only those who have been concerned in the murders of the following persons because those persons were barbarously and treacherously murdered:—

- The children Parker and Pote, killed at Omata, on the 27th March, 1860;
- The boy Joseph Sarten, killed at Henui, on the 4th December, 1860;
- The Native Ngakoti, who was killed, and his wife and her daughter killed at Kaipikari, in December, 1864;
- Mrs. Margaret Fahey, killed at Rama Rama, on the 16th October, 1863;
- The boys Richard Trust and Nicholas Trust, killed at Kennedy's Farm, on the 24th October, 1863;
- The Rev. Mr. Volkner, killed at Opotiki, on the 2nd March, 1865;
- Mr. James Fulloon, and his companions, killed at Whakatane, on the 27th July, 1865;
- The Chief Rio Haeaterangi, killed near Wanganui, in January, 1865.

The murderers of those persons will be brought to trial as soon as they are arrested.

The Governor also excepts from this pardon the Chief Te Pehi, because, having taken the Oath of Allegiance to Her Majesty, he violated his oath, and treacherously attacked the Queen's troops at Pipiriki; when taken he will be brought to trial for this crime.

All others are forgiven.

Out of the lands which have been confiscated in the Waikato, and at Taranaki and Ngatiruanui, the Governor will at once restore considerable quantities to those of the Natives who wish to settle down upon

their lands, to hold them under Crown grants, and to live under the protection of the law. For this purpose Commissioners will be sent forthwith into the Waikato, and the country about Taranaki, and between that place and Whanganui, who will put the Natives who may desire it upon lands at once, and will mark out the boundaries of the blocks which they are to occupy. Those who do not come in at once to claim the benefit of this arrangement must expect to be excluded.

The Governor will take no more lands on account of the present War.

As regards the prisoners now in custody, the Governor will hold them until it shall be seen whether those who have been in arms return to peace. If they do so the prisoners will be set at liberty.

The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the Tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.

The Governor now calls upon all the Chiefs and Tribes to assist him in putting a stop to all such acts of violence for the future; for all, whether Europeans or Natives, have a common interest in putting an end to such crimes, and in preserving the peace of the Colony.

The Governor is about to call a meeting of all the great Chiefs to consult with his Government as to the best means whereby the Maori people may be represented in the General Assembly, so that they may henceforth help to make the laws which they are called on to obey. At that meeting all matters can be discussed, with a view of establishing a general and lasting peace throughout New Zealand.

Her Majesty the Queen desires that equal laws and equal rights and liberties may be enjoyed by all her subjects in this Island, and to that end the Governor in the name of the Queen publishes this Proclamation.

Given under my hand, at the Government House, at Wellington, and issued under the Public Seal of the Colony of New Zealand, this second day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G. GREY.

By His Excellency's command,

FRED. A. WELD.

GOD SAVE THE QUEEN!

#### PROCLAMATION

*Proclaiming Martial Law throughout the Districts of Opotiki and Whakatane.*

By His Excellency Sir GEORGE GREY, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same, &c., &c., &c.

WHEREAS instructions have been issued and Military force has been employed to capture the Murderers of the Rev. Mr. Volkner, Mr. James Fulloon and his companions, at Opotiki, and Whakatane:

And whereas it is expedient that summary authority should be exercised by the Commander of the Military Forces so employed, and that persons suspected of the said Murders, or of aiding and abetting therein, should be tried by Courts-Martial:

<sup>632</sup> New Zealand Gazette, 5 September 1865, no 35, pp 267-268

Now I, the Governor, do hereby proclaim that Martial Law will be exercised throughout the Districts of Opotiki and Whakatane, from the date hereof until this Proclamation shall be duly revoked.

Given under my hand, at the Government House, at Wellington, and issued under the Seal of the Colony of New Zealand, this fourth day of September, in the year of our Lord one thousand eight hundred and sixty-five.

G. GREY.

By His Excellency's command,  
J. C. RICHMOND.

GOD SAVE THE QUEEN!

#### ORDER IN COUNCIL,

*Constituting the District of Coromandel under "The Native Districts Regulation Act, 1858."*

G. GREY, Governor.

At the Government House, at Wellington, the twenty-eighth day of June, 1865.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS by an Act of the General Assembly of New Zealand intituled "The Native Districts Regulation Act, 1858," it is provided that it shall be lawful for the Governor in Council from time to time to appoint districts for the purposes of the said Act, being districts over which the Native Title shall not for the time being have been extinguished:

Now therefore, His Excellency the Governor, by and with the advice and consent of his Executive Council, doth hereby order, appoint, and declare that the territory hereafter described shall be a district for the purposes of the said Act, that is to say—All territory lying within a boundary line commencing on the north at Cape Colville, thence by the sea-coast to Whangamata, thence by a straight line to Tararu Point, Hauraki Gulf, thence by the eastern shore of that gulf to the point of commencement; and doth appoint and declare that the said district shall be called the Native District of Coromandel.

And doth declare that this order shall take effect from and after the twenty-eighth day of June, 1865.

FORSTER GORING,  
Clerk of the Executive Council.

#### ORDER IN COUNCIL

*Constituting the District of Coromandel under "The Native Circuit Courts Act, 1858."*

G. GREY, Governor,

At the Government House, at Wellington, the twenty-eighth day of June, 1865.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS by an Act of the General Assembly of New Zealand, intituled "The Native Circuit Courts Act, 1858," it is provided that it shall be lawful for the Governor in Council from time to time to appoint districts for the purposes of the said Act, being districts over which the Native Title shall not for the time being have been extinguished:

Now therefore, His Excellency the Governor, by and with the advice and consent of his Executive Council, doth hereby order, appoint, and declare that

the territory hereafter described shall be a district for the purposes of the said Act, that is to say—All territory lying within a boundary line commencing on the north at Cape Colville, thence by the sea-coast to Whangamata, thence by a straight line to Tararu Point, Hauraki Gulf, thence by the eastern shore of that gulf to the point of commencement; and doth appoint and declare that the said district shall be called the Native District of Coromandel.

And doth declare that this order shall take effect from and after the twenty-eighth day of June, 1865.

FORSTER GORING,  
Clerk of the Executive Council.

#### ORDER IN COUNCIL,

*Revoking an Order in Council, of March, 1863, and otherwise regulating the exercise of the Miners' Rights Franchise.*

G. GREY, Governor.

At the Government House, at Wellington, this twenty-eighth day of August, 1865.

Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS by "The Miners' Representation Act, 1862," section IX., it was enacted "that it shall be lawful for the Governor in Council from time to time to make such Rules and Regulations as may be necessary for removing any obstacle of a technical or formal nature to the carrying out of the provisions of the said Act." And by "The Miners' Representation Act Amendment Act, 1863," section IV., it was enacted that "the above clauses" (therein) "shall be read and construed as part of 'The Miners' Representation Act, 1862,' and the provisions of the said Act shall apply to such licenses as aforesaid" (referring to the licenses mentioned in section II. of the said Amendment Act) "in all respects in like manner as to Miners' Rights."

And whereas by an Order in Council made in pursuance of the provisions of the first-mentioned Act (and notified in the *Government Gazette* of the 5th March, 1863), a stamp bearing the words "Miners' franchise exercised," was appointed "at each election as the distinguishing mark or stamp to be impressed upon every Miner's Right in respect of which any person shall vote at such election."

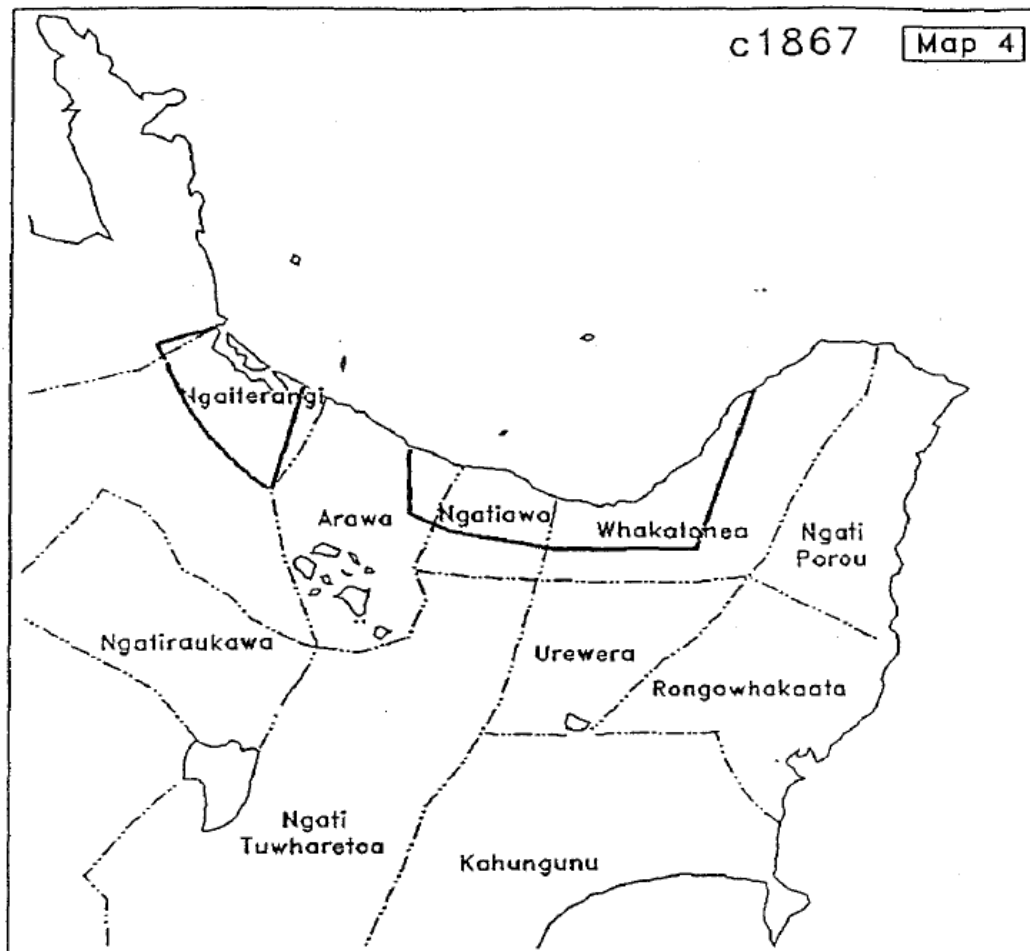
And whereas it is expedient that such Order in Council should be revoked, and that such Regulation should be made as hereinafter provided:

Now therefore, His Excellency the Governor, with the advice and consent of the Executive Council of New Zealand, doth hereby revoke the said recited Order in Council, and doth hereby direct that the following Regulation shall be in force from and after the fifteenth day of August, 1865.

Whenever any person qualified to vote by virtue of clause II. of "The Miners' Representation Act, 1863," shall have voted in respect of such qualification at any election of Gold-fields Members of the House of Representatives, or of Gold-fields Members of the Provincial Council of any Province, or for Members of the General Assembly or of a Provincial Council, the Returning Officer or Poll Clerk shall forthwith thereafter write upon the Miners' Right held by such voter the word "exercised," adding thereto the date of such vote, and the signature of such Returning Officer or Poll Clerk.

FORSTER GORING,  
Clerk of Executive Council.

8.4 Appendix 4: Interpretation of Map Sent to Imperial Government c.1867<sup>633</sup>



<sup>633</sup> This map discussed on page 32 of this report is an interpretation of GBPP (IUP) v 15 opposite p 126 as was included in Marr, 'Background to the Tuwharetoa Ki Kawerau Raupatu Claim', between pp 31-32