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# Northland Crown Purchases, 1840-1865

**A Report Commissioned by the Crown Forestry Rental Trust**

**Vincent O'Malley**

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## Preface

My name is Vincent Michael O'Malley. I have a BA (Hons) in History from the University of Canterbury and a PhD from Victoria University of Wellington. I have had one book published (*Agents of Autonomy: Maori Committees in the Nineteenth Century*, Huia Publishers, 1998), and have contributed to the *Dictionary of New Zealand Biography* and *New Zealand Journal of History*, along with various other publications. I have worked as a professional historian in the Treaty of Waitangi claims process for more than 13 years and was Research Manager at the Crown Forestry Rental Trust between 2000 and 2004. I have previously presented evidence to the Mohaka ki Ahuriri, Napier Hospital, Tauranga Moana Raupatu, Turanganui-a-Kiwa, Urewera, and Central North Island District Inquiries. I am currently a Research Director of the Wellington-based consultancy HistoryWorks Limited.

This report has been made possible only with the valuable contributions and assistance of a number of people. Firstly, I should like to thank the many claimant groups in Northland I have met with during the course of preparing the report for their hospitality and insights into the issues covered here. I have endeavoured wherever possible to incorporate feedback received from claimant groups (and Te Rōpū Whakapiripiri) by, for example, covering Crown purchases on a district basis, rather than submerging these in a more generic Northland overview.

I also owe a huge debt of gratitude to Craig Innes and Bob Metcalfe, both of whom have provided ongoing research assistance throughout the course of this project. Both researchers have worked longer and harder in providing research assistance for this report than I had any right to reasonably expect of them and have cheerfully put up with my seemingly never-ending stream of requests for information and material. Craig, in particular, has closely analysed the original Crown purchase deeds covered in this report and first alerted me to many of the obvious inconsistencies and anomalies buried within these. His work on the deeds is presented in a separate document, which forms a supplement to this report.

I should also like to thank Michael Keir-Morrisey, who provided gap-filling research towards the end of the project for some of the Auckland sources cited, along with

other historians engaged on the Northland research programme with whom I have exchanged references and ideas on various topics. The latter include David Armstrong, Bruce Stirling, Ralph Johnson, Peter McBurney, Richard Towers, and Evald Subasic (along with Dr Barry Rigby of the Waitangi Tribunal). I would also like to thank Bruce Stirling and David Armstrong for taking time out of completing their own work to undertake preliminary peer reviews of an earlier draft of this report, and John Hutton, who provided the formal review. John Acheson kindly gave permission for me to consult the relevant draft chapters from his forthcoming biography of his great-uncle, Frank Acheson. As indicated in the relevant footnotes, Dr Jane McRae of the University of Auckland provided any modern translations required. I am also grateful to the staff of the Crown Forestry Rental Trust, and in particular Leah Campbell and Mihi Harris-Brown, for their assistance with this project.

Finally, it would be remiss of me not to thank my wife, Dr Joanna Kidman, for her patience and forbearance over the extended period in which I have been absorbed in completing this report.

To all those who have contributed in some way to this report I extend my deepest and most sincere thanks.

Ka nui ngā mihi ki a koutou katoa mo ō mahi āwhina i ahau.

(Dr.) Vincent O'Malley
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## List of Abbreviations

| | |
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| ACL | Auckland City Library (Special Collections) |
| AJHR | *Appendices to the Journals of the House of Representatives* |
| Arch-NZ | Archives New Zealand (Head Office, Wellington) |
| Arch-NZ (Akl) | Archives New Zealand (Auckland Regional Office) |
| ATL | Alexander Turnbull Library |
| AWMML | Auckland War Memorial Museum Library |
| CFRT | Crown Forestry Rental Trust |
| DNZB | *Dictionary of New Zealand Biography* |
| GBPP | *British Parliamentary Papers – Colonies New Zealand* (Irish University Press edition) |
| JPS | *Journal of the Polynesian Society* |
| LINZ | Land Information New Zealand |
| NZJH | *New Zealand Journal of History* |
| NZPD | New Zealand Parliamentary Debates |

# 1. Introduction

This report considers the Crown's acquisition of nearly 800,000 acres of Māori land in Northland, purchased in over 120 separate transactions over the period from 1840 to 1865.[1] These transactions are explored within the broader contextual framework of the relationship between northern Māori and the Crown over this same period, with a particular (though not exclusive) focus on the nature of the relationship in the period after 1846. Although terms such as 'Crown purchase', 'sell' and 'sold' are employed throughout the report, this should not be taken as in any way suggestive of the nature of the transactions being considered. Such language instead reflects the commission issued for this project, and in fact it will be argued in later chapters that many of the transactions considered in this report did not become 'Crown purchases', as that term might be considered today, until several decades after 1865. Accordingly, terms such as 'transaction' and transact' are frequently favoured. Any consideration as to how these transactions might have been understood by the parties prior to that time necessarily requires a careful examination of the context in which such deals were made, which is a primary focus of several of the early chapters in this report. In short, it is a fundamental assumption of the report that the transactions cannot be adequately understood or explained without first understanding the context in which these occurred.

At various points throughout this report, the question of the adequacy of Crown consultation with all interested parties to a transaction is considered. But it should be noted that in discussing this question, the report seeks to avoid making any judgments as to the nature of customary tenure in the north. Instead, coverage of this issue is premised on three assumptions:

[1] For the full list of transactions, and more detailed technical information concerning each of these than it was feasible to reproduce in the present report, see Craig Innes, 'Northland Crown Purchase Deeds, 1840-1865', (Report commissioned by CFRT), July 2006. The Innes resource document emerged from the same commission as the current report and should be read alongside the overview presented here. It should also be noted that precise quantification of total land alienation by means of 1840-1865 Crown purchases has not proven possible at the time of writing, owing to the only loosely-defined and uncertain inquiry district boundaries for the area. This has also meant that a certain amount of guesswork has been involved in ascertaining which (if any) inquiry district particular transactions are likely to fall within.

- Firstly, that it was incumbent on Crown land purchase agents to undertake an extensive and patient inquiry into customary rights to any land block before completing its purchase, and that all interested parties ought to have been consulted, and fully and publicly agreed to transact the land, prior to any deed being signed.
- Secondly, that although the assertion of an interest to any area of land was not of itself evidence of the validity of the claim, Crown purchase officers had a particular responsibility to ensure all such claims were thoroughly investigated and considered prior to finalising any land deal.
- Thirdly, that although rangatira could be empowered by their communities to negotiate and sign any Crown purchase deed on behalf of the remaining owners, they were not in a position to do so unilaterally, without the prior sanction of the rest of their hapū, and it was accordingly incumbent on Crown officials to document any consent to such arrangements prior to completing any transactions.

It is against these yardsticks alone, and not against the question as to whether the 'right people' were dealt with, that the Crown's performance of its obligations in this area is considered. The latter question is more appropriately considered in tangata whenua evidence.

Terms such as 'Northland' and 'northern', as employed in this report, refer specifically to the (at time of writing) only loosely-defined Waitangi Tribunal Inquiry Districts of the Bay of Islands, Hokianga, Mahurangi, Whangaroa, and Whangarei, and not to the wider area more conventionally understood as constituting Northland. Where a more specific area is considered the report also endeavours to make this clear. In some cases where the sources refer to specific iwi and hapū those appellations are used. However, these sometimes need to be taken with a grain of salt, shedding as much light on the faulty assumptions made by their European authors as on the true nature of iwi and hapū dynamics in any area. Critical consideration of this issue is beyond the brief of the present project, but the warning nevertheless remains an important one.

The report is entirely based on the documentary record and has not employed oral history sources (though, arguably, material such as Land Court testimony recalling the earlier transactions constitute a kind of transcribed oral history and have been consulted where possible). Formal oral history interviews were not conducted for the project not because these were considered unimportant or a lesser form of evidence – but, on the contrary, because they were considered too important to become a mere tack-on to the present report. Hence the report will need to be considered alongside other evidence that might be presented on the subject of the Crown's pre-1865 transactions in the north. Such further evidence will, it is to be hoped, explore the full complexity of local hapū and iwi dynamics underpinning many of the northern transactions in a more comprehensive manner than is possible in an overview report of the kind presented here.

In the main the report is based on the Crown's own official record, both published and unpublished, of the various Northland transactions. Such an approach has both strengths and weaknesses. On the positive side of the equation, this enables us to consider these land deals against the Crown's own contemporary standards and stated land-purchase policies (a measure against which, as will be seen, the Northland Crown purchases frequently fell far short of the self-imposed expectations for acceptable land dealings). One of the limitations of relying on such sources is, of course, that they provide a flawed and partial insight into the transactions. It is, for example, assumed in the Crown's own records that the only valid and legitimate understanding as to the nature of these arrangements is that held by the Crown. Such an assumption can be tested in part by employing the standard historian's technique of reading against the grain, and of considering documentary evidence within the broader context in which it was produced.

Understanding of that broader context has been greatly aided in the case of the present report through the use of a wide range of unofficial sources, from private papers and diaries through to contemporary newspapers. Such sources, and in particular, for example, the private correspondence between Crown agents, frequently provide a much greater insight into the true thoughts and intentions of government officials than the more stuffy and reserved official correspondence that was exchanged between them. Other unofficial sources from this period also have the advantage of allowing

some insight into the issues considered of most importance to Northland Māori at this time (such as, for example, the published reports from *Te Karere Maori* of the several hui between various governors and northern leaders).

Yet even these supposedly 'Māori' sources were filtered through particular cultural lenses in their contemporary translations, so that, to take one example, statements from northern Māori to the effect that they will acknowledge Queen Victoria as a chief become twisted into an explicit recognition of British sovereignty over the area in their English rendering.[2] In recognition of this fact, the report employs bilingual quotes when citing northern Māori wherever possible. However, in some cases only the English translation has survived, whilst in other cases the te reo Māori text may be incomplete or too illegible to attempt to accurately reproduce in the report. Where this is the case, the limitations of the English translation should be borne in mind in considering the source being cited.

The report begins by considering Crown land-purchase policy in the period between 1840 and 1865 (chapter 2). Lord Normanby's August 1839 instructions to William Hobson provided the basis not just for the Treaty of Waitangi, but also for later purchase procedures in New Zealand, particularly with its injunction to buy land cheaply from Māori and sell it at a significant mark-up to settlers whose immigration would be largely underwritten by the profits generated by such means. Māori were, it will be argued, essentially being invited to pay the expenses involved in their own colonisation, whilst the 'buy cheap, sell dear' strategy hardly sat comfortably with instructions that all land should be acquired on the basis of 'fair and equal contracts' and that Māori should not be allowed to enter into any transactions in which they might become 'the ignorant and unintentional authors of injuries to themselves'.

Even as the ink was drying on the various copies of the Treaty taken around the country, Crown officials were debating at length the nature and extent of customary Māori land rights now supposedly protected by virtue of the agreement. Two competing schools of thought had emerged on this question, one favouring a broad interpretation, which more or less saw the whole country under native title, and a

[2] Unless otherwise explicitly stated, all of the translations used in this report are contemporary ones.

second which favoured a much more limited construction of the property right. According to this second group, Māori could only validly lay claim to lands which they cultivated and occupied in accordance with European precepts, and lands upon which they had not expended capital or labour were therefore rightly available for colonisation without recognition of native title. Earl Grey's 1846 instructions, effectively requiring Governor George Grey to confiscate uncultivated or unoccupied lands wherever possible, most definitely conformed with the more restrictive interpretation but threatened to provoke massive Māori resistance, and the probable destruction of the colony, if implemented.

Governor Grey therefore successfully argued in favour of an alternative means to the same end, involving nominal recognition of Māori title to the so-called 'waste lands', coupled with an aggressive land-purchase programme aimed at acquiring large tracts of land in advance of the needs of settlement and at 'trifling' prices. In Grey's view, many Māori would 'cheerfully' agree to transact their lands on this basis, appreciating that the nominal monetary payments received at the time of the purchases were only a token, and that 'the real payment' would come from the enhanced value of their remaining reserves, and significant Crown investment in schools, hospitals, and other desirable infrastructure funded out of the profits made on the resale of their lands to settlers. He therefore quickly brought about an end to Robert FitzRoy's regulations allowing a limited waiver of Crown pre-emption, enforcing the Crown's monopoly on purchasing land more tightly than ever and instructing Crown purchase agents to promise various tangible benefits to Māori who agreed to enter into land deals with the Crown. Indeed, the widespread promise of future benefits arising from transactions with the Crown became a cornerstone of the successful purchase strategy implemented after 1846.

In the north, Māori remained numerically and in most other respects dominant in the period to 1865, but suffered from a stagnant economy, brought about in no small part by the Crown's decision to relocate its capital to Auckland and the imposition of customs levies on goods traded with the settlers (chapter 3). Both factors fed into the Northern War fought between 1845 and 1846. Prior to that conflict northern Māori remained firmly in control of their own affairs. The decision to surrender up a high ranking Bay of Islands chief accused of murder for trial and subsequent execution in

1842 might, for example, be seen as a concession to British sovereignty but on closer examination was primarily motivated by customary concerns and involved numerous concessions to Māori preference on the Crown part. Settlers in the north were still expected to observe tribal protocols and tikanga and could be severely punished for breaches of these. At Whangarei, for example, many of the settlers were subjected to a taua muru in 1842 for desecrating wāhi tapu in the area. A similar taua muru at Matakana in 1845 prompted the Crown to demand the cession of more than 1000 acres of extremely valuable land at Takahiwai in compensation, but did not reflect the more general balance of power between the parties.

Even after the much-trumpeted British 'victory' in the Northern War, local Māori remained firmly in control of their own affairs, and British sovereignty continued to be more nominal than real throughout the north. In 1847, for example, an official party was despatched to Northland in order to 'remonstrate' with chiefs in the area concerning numerous killings that had taken place, deemed murders by the Crown but viewed as entirely justified punishments for serious transgressions of Māori custom by northern Māori. The officials concerned subsequently reported that such 'crimes' would continued unchecked until the Crown was strong enough to seize and execute the offenders. But the Crown's ability to enforce British law in the north against the wishes of local Māori was not much stronger in 1865 than it had been two decades earlier, and the northern tribes continued to govern their own affairs in accordance with their own customs for much of the period covered in this report.

Yet northern Māori remained desperately keen to revive their ailing economy, and increasingly the key to this was seen as lying in the establishment of new townships, which would provide enhanced opportunities for trade with the settlers and a range of other perceived benefits. Proposals for a new township to be founded at Kerikeri, first made in 1847 and revived again four years later, in 1851, came to naught, but by the mid-1850s it was widely reported that the northern tribes were willing to transact lands with the Crown in return for new townships in their midst. Firstly, however, the relationship with the Crown, which had been strained since 1846, needed to be placed on a better footing (chapter 4). The re-erection of the flagstaff on Maiki Hill by northern Māori in January 1858 was seen as a key to reviving the long-established alliance with the Crown, first forged in the 1820s. But the flagstaff story also revealed

lingering Crown suspicions and doubts as to the peaceful intentions of the northern tribes. Officials had long resisted efforts to restore the flagstaff, and desperately avoided overt involvement in the 1858 re-erection, fearing that to be seen to have supported the initiative in any way might commit the Crown to the defence of the new flag.

Governor Thomas Gore Browne, in visiting the district soon before the flag-raising ceremony, did, however, commit the Crown to a renewed pact of friendship and mutual protection with northern Māori, as part of which he specifically promised that a new township, in which Māori and Pākehā would live together for the benefit of all, would be soon established. The Bay of Islands Settlement Act of 1858, although intended to give effect to this promise, proved a dismal failure. Northern Māori provided significant areas of land in the expectation of receiving their township. But having secured its northern flank, the Crown soon turned its attentions to other more pressing problems in Taranaki and Waikato. And when the lands within the boundaries of the special settlement were eventually handed over to the Auckland Provincial Government for disposal all thought of an 'experimental' township embracing the two cultures was entirely abandoned. Whereas it had earlier been envisaged that extensive free grants of land would be made to northern Māori within the settlement in recognition of their contribution to the scheme, regulations introduced in 1864 made no provision at all for such grants to be made to Māori. In the end the whole scheme had amounted to little more than just another means by which to obtain Māori lands at a fraction of their true value, whilst additionally shoring up the 'loyalty' of the northern tribes at a critical time when wars were being fought against Māori elsewhere in the country.

That 'loyalty' was again affirmed at the Kohimarama Conference in 1860. But that it did not equate with submission to English law was seen both in the story of Maihi Paraone Kawiti's dismissal from his government-salaried post as Assessor in 1859 and by the subsequent history of official rūnanga in the north. Kawiti's dismissal came about when he was accused (and openly admitted) condoning the execution of a member of his tribe considered guilty of practising mākutu. Although the events involved were complex, and there are suggestions that a contentious Crown purchase may have been the real heart of the case, the essential fact remained that in 1859 the

Crown was in no better position to enforce English law in the north than it had been earlier.

Grey hoped to get around this problem through a scheme of indirect rule through official rūnanga and other 'new institutions' and received support for his proposals from northern Māori by again promising townships, schools, hospitals and other benefits. Those benefits largely failed to materialise during the brief period in which the rūnanga system was operational in the north, and nor did the tribes there prove willing to implement English laws against themselves by such means. Instead, Crown officials in the north were forced to mediate in disputes which had little or no standing under English law, but were nevertheless deemed important in Māori eyes, in order even to be able to exercise any influence in the area. Crown officials may have hoped to be able to appropriate Māori institutions such as rūnanga in aid of their goal of indirect rule, but instead found the whole scheme reappropriated by Māori for their own, rather different ends.

Chapter 5 moves from consideration of the broader political context to a more detailed discussion of the specific Crown purchases completed in Northland between 1840 and 1865, organised on a district basis.[3] In 1854 Donald McLean, regarded as the Crown's most successful purchase agent, was placed in charge of a newly-established Native Land Purchase Department, and instructed to focus particular attention on the northern districts. J.G. Johnson was subsequently deployed in the Mahurangi and Whangarei districts, and H.T. Kemp despatched to commence negotiations at the Bay of Islands and Whangaroa.

At Mahurangi the Crown's April 1841 purchase of the entire district from a group of Hauraki chiefs had already left a legacy of ongoing complaints from other groups excluded from the original transaction. At least a further 15 separate transactions covering the same area would be completed in the period to 1865 in an effort to extinguish all remaining interests in the lands. But despite the sometimes farcical nature of proceedings, this series of transactions went a long way to ensuring

[3] Chapter 5 contains no separate entry for Hokianga for the simple reason that there were no Crown purchases in that district, as currently defined for hearing purposes, in the period to 1865. However, Hokianga Māori were extensively involved in transactions elsewhere in the north and this is discussed in the relevant sections dealing with those districts.

Mahurangi Māori would be left practically landless by the early twentieth century. And such an outcome was further facilitated with respect to the Hauraki Gulf Islands by the purchase of Rangitoto from a solitary chief, mopping up operations on Aotea (Great Barrier Island) to extinguish remaining native title after earlier private transactions on the island had failed to finish the job, and a remarkable Native Land Court determination in 1867 that, although the Crown's title to Tiritiri Matangi rested on an uncertain foundation, it had somehow managed to acquire the island.

It was a similar story of overall looseness in the Whangaroa district, where the Crown's foolhardy Mangonui purchase from the Te Rarawa chief Nopera Panakareao in 1840, followed by a separate deal signed with Pororua the following year, inflamed tribal tensions to the point where a short war was fought in 1843 with respect to the question of which group had ongoing authority over the lands supposedly 'sold' to the Crown.[4] Subsequent Crown 'purchases' of the same lands would be necessary into the 1850s and early 1860s, but none of these appear to have been any more successful in convincing local Māori that their rights over the lands in question had ceased. That was hardly surprising given the laxity with which these and subsequent Whangaroa purchases had been conducted, rendering many of the transactions all but nugatory.

At Whangarei, more land was acquired by means of pre-1865 Crown purchase than in any other Northland district,[5] and the means were again not always pretty. Johnson determined from the outset to dispense with the 'usual and safer method' of assembling all owners prior to completing a transaction in favour of an alternative strategy designed to pressure dissenting owners into accepting compensation for their interests or risk losing out altogether. In one case there is prima facie evidence to suggest that a deed supposedly signed by 106 owners may have been fraudulent, and in one of the more reprehensible purchases completed anywhere in the country prior to 1865 in another instance the Crown proceeded to purchase a block of land from just one chief, despite knowing full well that there were many other owners of the land. Adding insult to injury, officials subsequently conducted a sham investigation into

[4] The Mangonui purchase was primarily located within the Muriwhenua district, but also appears to have overlapped into Whangaroa.

[5] With the exception of Mahurangi and the Hauraki Gulf Islands, which are combined into one district for Tribunal hearing purposes, but are treated separately in the present report.

customary rights to the land, designed to retrospectively deny the interests of those they had earlier acknowledged as having legitimate rights to the block.

Further north, at the Bay of Islands, the total area acquired by means of pre-1865 Crown purchases was smaller. But it did include many of the best lands not previously acquired by old land claimants. And the means employed by Kemp to acquire Māori lands were scarcely much of an improvement on those of Johnson. Indeed, by the time that Kemp eventually relinquished his post as District Commissioner early in 1866 even his superiors had cause to deplore the 'very unsatisfactory' manner in which he had completed purchases in the district. Their criticism was perhaps understandable given that Kemp had continued to purchase lands on behalf of the Crown for almost a full year after being dismissed from his position as District Commissioner and eight months after the Native Land Purchase Department had been formally abolished – using funds earlier advanced him for the purchase of lands to pay his own salary for all of this time!

One of the larger purchases completed by Kemp at the Bay of Islands, the 7224-acre Mokau block, purchased for the sum of £240 in January 1859, forms the subject of the detailed case study presented in chapter 6. In many respects, this block selected itself for such a focus, given that it was the only Crown purchase block which generated large volumes of subsequent documentary evidence. Various petitions and appeals, occupation of the land, the felling of kauri trees on the block in deliberate violation of Pākehā laws, and its referral to two separate inquiries into the circumstances behind its purchase, all tend to suggest that the Mokau block was a particularly contentious acquisition for the Crown.

Yet there is nothing at all in the actual documentary evidence available as to the negotiations leading up to the transaction to suggest that this was much worse (or better) than any other Crown purchase completed in the north prior to 1865. Like nearly all of the other Kemp deeds signed at this time, there is no evidence to suggest that hui were held to discuss the proposed transaction prior to this being finalised and little which sheds light on how the list of signatories to the transaction was reached, though we do know that the price paid was, in Kemp's view, as low as it could be

made. It was, in other words, on the face of it just a typical Northland Crown purchase, with all of the typical deficiencies that were associated with this.

In fact, the Crown argued before both the Acheson Native Land Court investigation of 1939 and the subsequent Royal Commission of Inquiry in 1947 (headed by Sir Michael Myers) that the Mokau transaction was just a standard Northland purchase. There was nothing to suggest that the price paid for the land was unconscionable relative to other Northland blocks purchased at this time, it was suggested, and in the absence of positive evidence of fraudulent or unjust dealings it had to be assumed that the purchase was an equitable and fair one and that appropriate consultation had been undertaken. Judge Acheson thought otherwise, finding in favour of the claimants on some (but not all) allegations advanced by them, a conclusion overturned by the Myers Commission, adopting a narrowly legalistic approach to the question which mimicked the submissions made by the Crown as to the appropriate burden of proof. Yet both inquiries considered, to greater or lesser extents, that Māori had slept on their rights in failing to advance grievances in relation to the purchase prior to the twentieth century. In doing so, they ignored stunning evidence that Māori had remained in occupation of the block – indeed, been born, raised, lived, died and been buried on Mokau – for more than 40 years after the 1859 'purchase', which only became a reality on the ground from about 1902, when a ranger was appointed and Māori began to be excluded from the land.

But why, then, if Mokau was simply a 'typical' Northland transaction, was such a huge outcry subsequently made over its purchase? Perhaps one clue came from the fact that Māori from the Bay of Islands, Hokianga and Whangaroa all claimed legitimate interests in the block. The subsequent campaign to have the transaction ruled invalid was one that garnered widespread support from Māori throughout Northland as a consequence. Another suggestion, though, first made by the Chief Judge of the Native Land Court in 1941, was that Mokau was seen as a test case. If this fairly representative Northland Crown purchase could be found to have been unjust, it stood to reason that nearly every other purchase in the region could potentially be placed in the same category. It was no doubt at this point that Crown officials began to feel very nervous.

And with good reason, too. As chapter 7, which provides a thematic overview of some of the key issues arising from the Northland Crown purchases, indicates, nearly every aspect of Crown purchasing in the north was so seriously flawed that – considered together – it is difficult to see how anyone could seriously claim a valid title on the basis of such transactions. The enhanced value of the reserves Māori would receive was, for example, touted by Crown officials as a key part of the 'real payment' made in purchasing lands. Yet nearly 80% of the Northland Crown purchase deeds contained no reserve provisions at all. And perhaps even more remarkably, in all but a handful of cases where land was reserved, the 'reserves' carried no official status as such, but were simply deemed to be exclusions from the transactions and were therefore considered fair game to be targeted in future purchasing efforts, despite explicit policy statements that Māori should never be called upon to alienate such lands.

Many of the 'reserves' were poorly documented and defined, adding to confusion as to their status. And such confusion was compounded further by the woefully inadequate nature of Crown surveying practices in the north. McLean had repeatedly emphasised the importance of careful and patient surveys of blocks proposed for sale being undertaken in consultation with the customary owners prior to any transaction being finalised, in order that all parties were provided with ample opportunity to stake their claim. But it was not until 1856 that Crown policy changed to require surveys prior to purchase, and even after then some deeds continued to be signed without any accompanying plan. In these circumstances, what was being transacted must have frequently been a matter of guesswork.

Poor surveying practices impacted directly on the prices paid for lands given that in many cases only rough estimates of acreage (and sometimes none at all) were all that were available to Northland Māori prior to the consideration being set. In fact, the low prices paid by the Crown was the most frequent complaint levelled by northern Māori in the period prior to 1865. Crown agents frequently boasted in private (and sometimes officially) as to the significant profits that the Crown would make on the resale of lands purchased from northern Māori to the settlers, and consideration of the prices paid by Pākehā before 1865 suggest that officials generally expected to pay Māori no more than about ten per cent of the price at which the lands would be

onsold, and sometimes much less than this. In many cases the value of the kauri, gum and other resources was itself greatly in excess of the price received from the Crown. Sometimes Crown agents employed arguments that the land had already been purchased (either by the Crown or private parties) in order to drive down the price they would be expected to pay, but in many instances northern Māori agreed to transact their lands in the expectation of receiving a variety of other, longer-term benefits from the deals. The failure of the Bay of Islands Settlement Act, and the lack of reserves in many blocks, meant that this 'real payment' was, on the whole, rarely received.

At least some Crown agents developed an early appreciation that customary Māori land rights were extremely complicated and that the process of acquiring any land from Māori was therefore an inherently fraught one, requiring slow and deliberate consultation with a wide range of interest-holders to ensure valid purchases could be completed. Unfortunately the reality of Crown purchase practice in the north did not reflect this knowledge. It was common, for example, for Crown agents to push through deals with only some of the groups claiming interests in a block, forcing other claimants to decide not whether they wished to sell their lands, but simply whether they wished to receive payment for these. Such tactics amounted to a kind of compensated confiscation of land interests, given that those who did not wish to sell their lands were denied the opportunity to exercise this right under these circumstances. Evidence of Crown agents walking the boundaries of blocks and physically marking off their external limits in the company of all interest-holders is rare for Northland, as is evidence of large hui being convened at which customary rights could be fully debated and resolved prior to any transaction being agreed. It is also noticeable that, despite the northern region having one of the largest concentrations of Māori population in the country, most of the Northland Crown purchase deeds were signed by relatively few people. Again, Crown agents were fully alive to the fact that rangatira could not sell the lands of their hapū without the consent of the rest of the owners. Evidence of that consent being given is, however, practically non-existent.

Such, indeed, is the paucity and deficiency of documentation available for many of the Northland Crown purchases as to call the validity of many of these transactions

into question. It is not just a case of Crown agents failing to document the process by which all owners were identified, or by which the consent of the non-signing owners was obtained to the transactions, but of deals done where the purchasing officer was the sole witness to the signatures of the vendors, for example, or of numerous deeds signed with no accompanying plan available, or discrepancies between the stated consideration and that actually received, or of extremely loose or misleading descriptions of block boundaries. McLean freely admitted in 1856 that many of the deeds drafted for the purpose of acquiring Māori land would not meet the then applicable standards for property conveyancing between Europeans. A lesser standard was evidently deemed sufficient when it came to acquiring lands from Māori, but if the Crown was required to prove its title to the Northland Crown purchase blocks, judged against the principles of equity and fairness, it almost certainly would be unable to do so in many instances.

Crown purchasing in Northland took place within a overwhelmingly Māori context, with northern Māori remaining firmly in control of their own world throughout the period to 1865. Many early observers freely acknowledged that Māori in Northland did not consider the pre-1840 transactions entered into with private parties as absolute alienations of their land interests. The question is often put as to when Māori 'understood' that a land sale had taken place, but it is suggested in chapter 7 that the more relevant question was at what point the Crown became in a position to impose its understanding on the pre-1865 land transactions. There is significant evidence that that point was not reached in Northland prior to 1865, and in many instances was not reached for several decades thereafter.

Northland Māori more or less consistently assumed an ongoing right to access lands supposedly sold throughout this period – and indeed fought inter-tribal wars with respect to such lands which would have been nonsensical if they considered their rights to these as having been in any way extinguished by virtue of the arrangements entered into with the Crown. Many of the lands purchased by the Crown prior to 1865 were not settled by Europeans or cleared of bush for decades after this and were little more than nominal purchases with no real meaning or discernable consequences on the ground. Northern Māori continued to freely occupy and utilise such lands as they always had. Even on those few blocks which had been settled by Europeans, Māori

remained firmly in control, imposing a range of obligations on the settlers which the latter ignored at their own peril and exercising ongoing rights to utilise and occupy such lands.

The various transactions entered into in the period to 1865 were essentially expressions of the nature of the northern Māori relationship with the Crown at any given time. Reassured by promises of ongoing benefits and a mutually beneficial relationship, many northern Māori agreed to transact their lands with the Crown. But all of the evidence points to the fact that they did not see themselves as having severed their own rights to these lands through such arrangements. Despite this, it was the Crown view of these deals as straightforward 'Crown purchases' which eventually prevailed, and it was at that point that the nominal purchases became a reality on the ground. That was almost certainly not a result which northern Māori had envisaged when agreeing to share their lands and resources with the settlers in the various deeds signed between 1840 and 1865.

The belated triumph of the Crown's interpretation of these deals as outright land 'sales' was probably one reason why there were relatively few formal petitions and appeals relating to the pre-1865 transactions at a later date. By the time that many northern Māori realised such lands had been (or were about to be) taken those who had been party to the original deals were no longer around and the Crown's grossly inadequate documentary record left little to go on. Indeed, such was the nature of the records that even Crown officials were often confused as to the basis upon which title to a particular piece of land had been acquired, and northern Māori were sometimes just as confused on this point. This was especially important considering that the onus was always placed on northern Māori to prove their claim to the land (rather than on the Crown to prove its title). Formal petitions were only acknowledged as such if tabled in the General Assembly by a member of Parliament and had to meet with a range of other requirements, allowing those that did not comply to be safely dismissed or ignored by the government, whilst a number of complaints made at a local level were almost certainly not fully documented.

And those that were lodged and for which some documentary record has survived often received short shrift from Crown officials. M.P. Kawiti's long-running

campaign for the return of portions of the Ruapekapeka block, acquired in 1864, eventually resulted in the governor writing to request that Kawiti stop corresponding with him on the subject. Yet the 'full inquiry' used to justify dismissing his claim involved no more than confirmation that the chief's name was on the 1864 deed and a cursory examination of the plan for the block. Kawiti had repeatedly reminded Crown officials of his pivotal role in re-erecting the flagstaff on Maiki Hill and his gifting of large areas of land to the Crown to mark the union of the two peoples symbolised by this act. But such deeds counted for little by the 1880s, and Kawiti's tireless but ultimately unsuccessful efforts to have the lands he considered wrongfully taken from his people restored to them ended only with his death in 1889.

The Ruakaka block was one of nine conveyances in the Auckland Province signed between November 1853 and March 1854 to include a provision in its deed providing for one-tenth of the proceeds received from the resale of the lands to the settlers to be expended for the benefit of Māori. But although significant sums were deducted for administration costs, surveys and other expenses, just one distribution of these funds was ever made to the Ruakaka block owners, in 1874. From the late nineteenth century northern Māori began petitioning and appealing for the payment of the remaining sums owing on account of the 'Auckland Tenths' deeds. Yet although the government contemplated offering Māori a lump sum payment in liquidation of this debt, it was instead decided to refer the matter to the Royal Commission on Confiscated Lands and Other Grievances. Thus a liability which the Crown had never previously denied was cleverly made contestable and the claim eventually rejected on the basis of utterly irrelevant evidence advanced as to the supposedly large sums expended by the Crown since 1853 on the general welfare of Māori.

But perhaps the most remarkable feature of the claim were the petitions from the descendants of owners of other pre-1865 Northland Crown purchase blocks which had not included tenths provisions in their deeds, who now sought to have one-tenth of the lands so acquired reserved to them as permanent tribal endowments. More than 60 years after the Crown purchases, northern Māori evidently continued to see the terms of these as open to further re-negotiation. What was fixed and final from the Crown perspective was apparently viewed as flexible and capable of further tweaking from the perspective of northern Māori. One party could not see beyond an historic

real estate transaction; the other continued to view this within the broader context of the relationship between northern Māori and the Crown. It was a fitting epilogue to the story of Crown purchasing in Northland more generally.

# 2. Māori Land Rights and Crown Purchase Policy, 1839-1865

## 2.1 Introduction

Even before the signing of the Treaty of Waitangi in 1840, British politicians and officials had considered and debated at length the state of affairs in New Zealand and the rights of its indigenous inhabitants to the lands which they occupied. Two competing schools of thought had emerged over this question. The first of these, supported by the New Zealand Company and its backers, maintained that indigenous societies could only lay claim to lands which they actually cultivated and occupied, and that lands upon which they had not expended capital or labour ought therefore to become wastelands of the Crown, available for colonisation without any recognition of native title. The second school of thought, backed by the permanent Under Secretary of State for the Colonies, James Stephen, the Church Missionary Society, the Aborigines Protection Society and members of the influential 1837 House of Commons Committee on Aborigines in British Settlements, took a much more extensive view of indigenous land rights.[6] Taking a gloomy view as to the impact of colonization, this group maintained that indigenous people were entitled to an unconditional property guarantee to all lands to which they laid claim. And since early visitors to New Zealand (such as Robert FitzRoy in 1838) had already made it clear that 'every Acre of Land in those Islands is the Property of one or another Tribe',[7] this implied a recognition of Māori ownership to all of the country.

Article Two of the Treaty seemingly settled the matter, with its guarantee of 'te tino rangatiratanga o o ratou wenua, o ratou kainga, me o ratou taonga katoa' (or, in the English version, 'the full, exclusive, and undisturbed possession of their lands and

[6] Waitangi Tribunal, *The Ngai Tahu Report 1991*, vol.2, Wellington: Brooker & Friend, 1991, pp.252-53; Vincent O'Malley, 'Treaty-Making in Early Colonial New Zealand', in Judith Binney (ed.), *The Shaping of History: Essays from the New Zealand Journal of History*, Wellington: Bridget Williams Books, 2001, p.132.

[7] Evidence of Robert FitzRoy, 11 May 1838, Minutes of Evidence before Select Committee on New Zealand, GBPP, 1837-1838 (680), vol.1, p.168, [docs., vol.15, p.4968].

estates, forests, fisheries, and other properties')[8], but this was far from the end of the debate. Wishful thinking remained a strong element in colonial policy with respect to New Zealand and there were those who refused to accept the Treaty's emphatic land guarantee as in any way incompatible with a circumscribed definition of Māori land rights, however unreal and jarring such a perspective seemed to officials on the ground. Indeed, not until the evolution of Grey's land-purchase policy after 1846 (which, though nominally adhering to the second school of thought, also appeased those favouring a limited view of Māori land rights) was any reasonably settled approach to this fundamental policy question to be found.

### 2.2 Normanby's Instructions

The principles purportedly underlying Britain's accession of sovereignty over New Zealand were outlined in the Instructions issued by the Colonial Secretary, Lord Normanby, to Captain William Hobson on 14 August 1839. Hobson was instructed to enter into treaty with the aboriginal inhabitants of New Zealand, 'whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government', for the recognition of Her Majesty's authority over the whole or any parts of the islands which they were willing to place under the Crown's dominion.[9] No draft of a treaty was included in Normanby's Instructions, and nor did he specify that a land guarantee was to form part of this (though this may have been the subject of discussions before Hobson's departure).[10] On the other hand, Normanby did outline in some detail the approach Hobson was to take with respect to the land question. Immediately upon his arrival in New Zealand Hobson was to issue a proclamation announcing that Her Majesty would not acknowledge as valid any title to land which was not confirmed by a Crown grant, and a commission was to be set up to investigate the fairness of private purchases negotiated with Māori prior to this time.

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[8] H. Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington: Government Printer, 1883, A.1, p.16.

[9] Marquis of Normanby to Captain Hobson, 14 August 1839, GBPP, 1840 (238), vol.3, pp.37-42, [docs, vol.24, pp.8055-8060].

[10] Peter Adams, *Fatal Necessity: British Intervention in New Zealand 1830-1847*, Auckland: Auckland University Press/Oxford University Press, 1977, pp.178-79.

Equitable purchases of a reasonable scale would be confirmed, but 'the acquisition of large tracts of country by mere land-jobbers' would not, and henceforth Crown pre-emption was to be imposed. Hobson was to negotiate, 'by fair and equal contracts with the natives', the cession to the Crown of such 'wastelands' as might be required by the settlers, such purchases being conducted 'through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector'.[11]

Britain's colonisation of New Zealand was to be undertaken on the cheap, however, and because the profit made on the resale to incoming settlers of lands purchased from Māori was intended to fund further land acquisitions and provide a pool for more emigration to the colony, Normanby assumed that 'the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers'. Nor could Normanby see any real injustice in this, since:

> To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.

Hobson, though, was enjoined that:

> All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory the retention of which by

[11] Normanby to Hobson, 14 August 1839, GBPP, 1840 (238), vol.3, pp.37-42, [docs, vol.24, pp.8055-8060].

> them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector.[12]

Crown pre-emption, then, was ostensibly intended to serve a dual fold purpose: it would, so Normanby appears to have believed, provide both a protective mechanism for Māori interests in their lands, and at the same time allow the government to fund further colonisation by means of its monopoly position as buyer and seller of land in New Zealand.

But as a number of historians have pointed out, Normanby's Instructions contained several obvious problems. For one thing, how could Hobson pursue a policy of buying cheap from Māori and selling dear to Pākehā without ignoring the injunction to purchase on the basis of 'fair and equal contracts'? As Alan Ward points out, the idea that Māori land was of little exchangeable value ignored the fact that higher prices were already being paid on the basis of site value and natural attributes such as access by water and the presence of grasslands.[13] On the face of it, Māori were being invited to underwrite the colonisation of their own country in a manner which could only ensure their own 'systematic economic marginalisation'.[14]

The high price paid by settlers was, according to Peter Adams, 'an artificial construct' which was 'created by a government land monopoly, reinforced by an upset price and auction system'.[15] But if it was assumed that most of the benefit to Māori from selling their lands would come from the added value given to the lands they retained through the introduction of capital and labour, then 'they must have been allowed to retain a pool of

[12] Normanby to Hobson, 14 August 1839, GBPP, 1840 (238), vol.3, pp.37-42, [docs, vol.24, pp.8055-8060].

[13] Alan Ward, *National Overview* (Rangahaua Whanui series), vol.2, Wellington: Waitangi Tribunal/GP Publications, 1997, p.23.

[14] ibid.

[15] Adams, p.206.

land which to transact, presumably by fixed-term lease, because progressive sale of the freehold or perpetual leases would exhaust the pool'.[16] Instead, the Crown actively discouraged Māori from leasing their lands privately, making such arrangements unenforceable after 1840 and illegal from 1846. In a very real sense Māori were to be denied any meaningful opportunity to realise the capital gains for their unsold lands which formed the primary rationalisation for the Crown's miserly purchase prices in the first place.

Normanby also instructed that separate accounts were to be kept of revenue obtained from land sales and that, after deductions for public works and other exigencies, 'the surplus of the revenue will be applicable...to the charge of removing emigrants from this Kingdom to the new Colony'. Yet in seeking signatures to the Treaty of Waitangi, Hobson and his representatives appear to have said little about the government promoting colonisation, or indeed that this would be funded out of profits made on the resale of Māori land to the settlers.[17] As the Tribunal's *Orakei Report* noted, '[h]ad this been done the likelihood of the chiefs agreeing to such a proposal would have been remote. Given the constant reiteration by Captain Hobson and his agents of the Crown's commitment to the protection of their lands and their rights the chiefs understandably failed to appreciate the risk they ran in agreeing to this provision.'[18]

At Mangungu on the Hokianga Harbour, where the Treaty was signed on 12 February 1840, for example, Hobson informed local Māori that if they took counsel from Frederick Maning (who had advised them against signing), they would 'be stripped of all your land by a worthless class of British subjects, who will consult no interest but their own, and who care not how much they trample on your rights'.[19] Maning, ironically, would later become one of the main 'tramplers' in Northland, but Hobson meanwhile informed Hokianga Māori that he had been sent to New Zealand to control such people

[16] Alan Ward, 'Supplementary Historical Report on Central Auckland Lands', (Report commissioned by the Crown-Congress Joint Working Party), 1992, p.16.

[17] Adams, p.200.

[18] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim (Wai-9)*, Wellington: Waitangi Tribunal, 1987, p.143.

[19] Hobson to Sir George Gipps, 17 February 1840, *Epitome*, A.1, p.17.

and to obtain their authority to do so. Even more explicit reassurances were offered elsewhere. At Coromandel, for example, Edward Williams informed assembled chiefs that 'the claim of pre-emption on the part of Her Majesty was intended to check their imprudently selling their lands, without sufficiently benefiting themselves, or obtaining a fair equivalent'.[20] And at Tauranga Major Bunbury explained that pre-emption was 'intended equally for their benefit and to encourage industrious white men to settle amongst them'. Rather than allowing 'men who would never come amongst them but to hamper the industrious' to acquire large tracts of territory, the Queen, he stated, would purchase their lands at a 'juster valuation'.[21]

As Peter Adams has observed, in view of the instructions to purchase Māori lands at 'an exceedingly small proportion' of the price at which they would be resold to the settlers, 'Bunbury's explanation of the reason for pre-emption and its likely benefit to the Maoris was palpably misleading'.[22] And nor is it clear that those chiefs who signed the Treaty understood the pre-emption clause to mean that the Crown would have the exclusive right of purchase, rather than merely the first option to do so. Many Northland Māori subsequently complained that the exclusive right of pre-emption intended by the Crown had not been adequately translated in the Treaty, and that the prohibition on their disposing of their lands to whomever they chose contradicted the promise made them in Article Three of all the rights and privileges of British subjects. Even Crown officials were occasionally inclined to admit that there was some truth to these assertions.[23]

### 2.3 Crown Policy, 1840-1846

The internal contradictions apparent in the Imperial government's attitudes towards Māori land rights in 1839 and 1840 reflected a mixture of wishful thinking, ignorance of local conditions, and the pulls of two competing schools of thought. But the period from

[20] T.H. Bunbury to Hobson, 6 May 1840, GBPP, 1841 (311), vol.3, p.100, [docs, vol.16, p.5288].

[21] Bunbury to Lieutenant-Governor of New Zealand, 15 May 1840, GBPP, 1841 (311), vol.3, p.103, [docs, vol.24, p.8089].

[22] Adams, p.199.

[23] Governor FitzRoy to Lord Stanley, 14 October 1844, *Epitome*, A.1, p.33.

1840 to 1846 was one of debate and adjustment, as politicians and administrators on both sides of the globe gradually came to grips with the reality that Māori laid claim to all of New Zealand and the attendant complications this involved.

In fact, even as the last signatures were being affixed to various copies of the Treaty around the country, there were those seeking to circumscribe and modify the land guarantee contained in Article Two. Governor Gipps of New South Wales, Hobson's immediate superior until New Zealand became a separate colony at the end of 1840, took a much more limited view of Māori land rights than that suggested in the Treaty. During the first reading of a Bill dealing with the establishment of a commission to examine pre-Treaty private land dealings in New Zealand in July 1840, Gipps propounded at some length his view that 'the uncivilized inhabitants of any country have but a qualified dominion over it, or a right of occupancy only'.[24] It followed from this that Māori could only lay claim to land which they actually cultivated or lived upon; the remaining 'waste lands' belonged to the Crown.

Lord John Russell (Secretary of State for the Colonies from September 1839 to September 1841), unaware of any contradictions between them, approved of both the Treaty and Gipps' speech, and in a debate in the House of Commons early in 1840 maintained that the government's policies with regard to New Zealand were entirely in accord with the theories of Emerich de Vattel, a famous eighteenth century French jurist.[25] Vattel, along with Thomas Arnold, argued that the property rights of indigenous peoples were limited to those lands which they occupied or cultivated. Russell, apparently believing that the Crown's demesne in New Zealand consisted of uncultivated and unoccupied 'waste lands', forwarded Hobson a charter for the new colony which confirmed Māori rights 'to the actual occupation or enjoyment...of any lands now actually occupied or enjoyed by such natives'.[26] Russell's additional instructions accompanying the charter required Hobson to clearly separate the lands of

[24] Speech of His Excellency Sir George Gipps, 9 July 1840, GBPP, 1841 (311), vol.3, pp.63-64, [docs, vol.24, pp.8069-8070].

[25] *New Zealand Advertiser and Bay of Islands Gazette*, 3 December 1840, 10 December 1840, [docs, vol.18, pp.6198-6201]; Adams, p.180.

[26] Royal Charter of 16 November 1840, GBPP, 1841 (311), vol.3, pp.31-33, [docs, vol.24, pp.8064-8066].

private persons and 'those still retained by the aborigines' from the royal demesne of the Crown.[27]

Although not explicitly stated, the implication was that lands not 'actually occupied or enjoyed' by Māori in a manner consistent with European usages could be assumed to form part of the royal demesne, available for onsale to incoming settlers. Such a view was further confirmed with additional instructions issued in January 1841 which required that 'the lands of the aborigines should be defined with all practicable and necessary precision' on the maps of the colony, thus allowing the demesne lands to be identified.[28] The Colonial Secretary had little conception of the enormity of such a task, for as he later explained, he had not supposed that 'any claim could be set up by the natives to the millions of acres of land which are to be found in New Zealand neither occupied nor cultivated, nor, in any fair sense, owned by any individual'.[29] Russell, as Peter Adams notes, 'either did not realize, or did not accept, that the Maoris claimed all the land in New Zealand and, while he had no very clear or consistent understanding of the problem, he adopted a limited interpretation of the land guarantee in the Treaty of Waitangi directly at variance with that of the Maoris, the missionaries, and Hobson'.[30]

It was Russell's successor, Lord Stanley (1841 to 1845) who inherited the problem of attempting to resolve the muddled question of Māori land rights. In October 1842 news reached London that Commissioner William Spain, sent out to investigate purchases purportedly completed by the New Zealand Company in 1839, was casting considerable doubt on the bona fides of these transactions.[31] This threw into jeopardy an earlier agreement between the Colonial Office and the Company as to the amount of land to be granted to the latter and prompted it to retreat from its earlier acknowledgement of

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[27] Russell to Hobson, 9 December 1840, GBPP, 1841 (311), vol.3, p.30, [docs, vol.16, p.5282].

[28] Russell to Hobson, 28 January 1841, GBPP, 1841 (311), vol.3, pp.51-52, [docs, vol.24, pp.8067-8068].

[29] Russell to Somes, 29 June 1844, GBPP, 1844 (556), vol.2, p.412, [docs, vol.24, p.8054]; Adams, p.181.

[30] Adams, p.181.

[31] ibid., p.182.

extensive Māori land rights in the areas it believed it had purchased. With the worth of its deeds of purchase called in to question, the Company now argued that:

> the only interest in land which our law has ever recognised as possessed by savages, is that of "actual occupation or enjoyment"...If the claims of the natives be limited to such lands...the question can, at the utmost, be one only of a few patches of potato-ground, and rude dwelling-places, and can involve no matter of greater moment than some few hundreds of acres.[32]

Despite the contradictions apparent in the fact that it had earlier implicitly recognised native title to vast tracts of land on both sides of Cook Strait, the Company now rejected extensive Māori property rights and dismissed the Treaty as nothing but 'a praiseworthy device for amusing and pacifying savages for the moment'.[33]

With negotiations at a standstill, in 1844 the Company succeeded in getting a parliamentary select committee to investigate their case. A draft report prepared by the Colonial Office recognised the broader view of Māori land rights, but this was rejected by the Committee by a narrow margin. Instead, it adopted the report of the chairman, Lord Howick, who condemned the Treaty of Waitangi as 'part of a series of injudicious proceedings' and stated that the acknowledgement of the rights of the Māori to 'all wild lands in those Islands...was not essential to the true construction of the Treaty of Waitangi, and was an error which has been productive of very injurious consequences'.[34] Stanley, though not feeling obliged to adopt the findings of the Committee (which he believed amounted to the view that 'the uncivilised inhabitants of any country have but a qualified dominion over it'), found some merit in its proposal for a tax on all uncultivated land, with confiscation as a penalty for non-payment. Needless to say, Stanley's belief that this would be 'an easy mode' of acquiring large tracts of land for

[32] Memorandum left at the Colonial Office by the New Zealand Company, n.d. [November 1842], GBPP, 1844 (556), vol.2, p.17 (appendix).

[33] Somes to Stanley, 24 January 1843, GBPP, 1844 (556), vol.2, p.30 (appendix no.2), [docs, vol.24, p.8050].

[34] Report from the Select Committee on New Zealand, GBPP, 1844 (556), vol.2, pp.12-13, [docs, vol.24, pp.8039-8040].

settlement hardly sat comfortably with his insistence that the property rights guaranteed in the Treaty would be honoured by the Crown.[35]

Under attack from the Company and its supporters over the obvious inconsistencies in Stanley's views (and from those such as the CMS concerned that he might implement the 1844 Committee's recommendations), in June 1845 the Secretary for State was finally forced to outline the Colonial Office's position on the extent of the land guarantee made to Māori. Stanley told the House of Lords that, though he believed there may have been some small areas of waste land in New Zealand to which the Crown could comfortably lay claim, over most of it Māori law and custom would have to be considered.[36] At the same time Stanley issued instructions for the new governor to replace FitzRoy, Captain George Grey, declaring the Crown's total commitment to the agreement entered into in 1840:

> I repudiate, with the utmost possible earnestness, the doctrine maintained by some, that the treaties which we have entered into with these people are to be considered as a mere blind to amuse and deceive ignorant savages. In the name of the Queen I utterly deny that any treaty entered into and ratified by Her Majesty's command, was or could have been in a spirit thus disingenuous, or for a purpose thus unworthy. You will honourably and scrupulously fulfil the conditions of the treaty of Waitangi.[37]

As Adams says, it had taken five years for the Colonial Office to clearly and unequivocally state that the correct interpretation of the land guarantee could only be decided by reference to Māori custom. Lord Stanley 'had at last created the possibility that the Treaty of Waitangi would be interpreted according to the sense in which the signatories understood it'.[38]

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[35] Stanley to FitzRoy, 13 August 1844, GBPP, 1844 (641), vol.3, pp.3-7, [docs, vol.24, pp.8093-8097].

[36] Adams, p.186.

[37] Stanley to Grey, 13 June 1845, GBPP, 1846 (337), vol.5, p.70, [docs, vol.24, p.8123].

[38] Adams, p.186.

Yet just when it seemed as if this broader interpretation of Māori land rights would finally prevail, the man who had written the report of the 1844 Select Committee (Lord Howick, later elevated to the title of Earl Grey) was appointed Secretary of State for the Colonies and proceeded to attempt to give effect to its recommendations.[39] In a despatch to Governor Grey enclosing a new constitution and charter for the colony in December 1846, Earl Grey reiterated the viewpoint expressed in 1844 (whilst wisely making minimal reference to the property rights promised Māori in the Treaty), in noting that '[t]he opinion assumed, rather than advocated, by a large class of writers on this and kindred subjects is, that the aboriginal inhabitants of any country are the proprietors of every part of its soil of which they have been accustomed to make any use, or to which they have been accustomed to assert any title'. From this doctrine, Earl Grey, declared, 'I entirely dissent':

> The Islands of New Zealand are not much less extensive than the British Isles and capable probably of supporting as large a population, while that which they actually supported has been variously estimated, but never I believe so high as 200,000 souls. To contend that under such circumstances civilized men had not a right to step in and take possession of the vacant territory, but were bound to respect the supposed proprietary title of the savage tribes who dwelt in but were utterly unable to occupy the land, is to mistake the grounds upon which the right of property in land is founded...I must regard it a vain and unfounded scruple which would have acknowledged their right of property in land which remained unsubdued to the uses of man. But if the savage inhabitants of New Zealand had themselves no right of property in land which they did not occupy, it is obvious that they could not convey to others what they did not themselves possess, and that claims to vast tracts of waste land, founded on pretended sales from them are altogether untenable. From the moment that British dominion was proclaimed in New Zealand, all lands not actually occupied in the sense in which alone occupation can give a right of possession ought to have been considered as the property of the Crown in its capacity as Trustee for the whole community....

[39] Stanley was replaced by William Gladstone in December 1845. Earl Grey succeeded Gladstone six months later.

> Such are the principles upon which, if the colonization of New Zealand were only now about to begin, it would be my duty to instruct you to act; and though I am well aware that in point of fact you are not in a position to do so, and that from past transactions a state of things has arisen in which a strict application of these principles is impracticable, I have thought it right that they should be thus explicitly stated in this despatch (as they are in the Royal instructions to which it refers), in order that you may clearly understand that although in many respects you may be compelled to depart from them, still you are to look to them as the foundation of the policy which, so far as in your power, you are to pursue....[40]

Governor Grey was thus effectively instructed to confiscate uncultivated or unoccupied Māori lands to the extent that he was able to do so, and pursuant to this policy was also required to register all lands actually occupied or owned by Māori and Europeans in the colony so that 'the whole of the remainder of the territory' could then be declared to be the royal demesne. As Rutherford commented, '[t]here is a marked muddle-headedness in this ponderous piece of Colonial Office prose'.[41] Wishful thinking, it seems, remained a strong element in British policy by 1846.

Governor Grey, though sympathetic to the opinions expressed by the Colonial Secretary (stating, for example, that there were 'very large tracts of land claimed by contending tribes to which neither of them have a strictly valid right'),[42] nonetheless realized that Earl Grey's instructions, if faithfully pursued, would almost certainly bring calamitous results for the future of British settlement in New Zealand. The effective confiscation of vast tracts of land throughout New Zealand would almost certainly have resulted in a colony-wide conflict which, given the local government's limited resources, would have been decisively won by Māori. In some circles, Northland Māori concerns that their lands were about to be seized in the wake of publication of the 1844 Select Committee

[40] Earl Grey to Governor Grey, 23 December 1846, GBPP, 1847 (763), vol.5, pp.67-69, [docs, vol.24, pp.8136-8138].

[41] J. Rutherford, *Sir George Grey, K.C.B., 1812-1898: A Study in Colonial Government*, London: Cassell, 1961, p.168.

[42] Governor Grey to Earl Grey, 15 May 1848, *Epitome*, A.1, p.49.

report were regarded as an important factor behind the Northern War.[43] George Clarke, the Chief Protector of Aborigines, had confidentially suggested to the governor that the 1844 report was likely to confirm the worst fears of Hone Heke and others with respect to the ultimate intentions of the British Crown.[44] But lofty intentions – expressed through the influential but powerless medium of a parliamentary committee – had now been replaced with a specific instruction from the Colonial Secretary to dispossess Māori of their lands. No wonder Governor Grey was reportedly in 'a fever of agitation' upon receipt of the instructions.[45] Nor was he alone in his response to news of the instructions. Some newspapers in the north were so fearful of Māori reactions upon hearing of the 'waste lands' policy that they censored the pertinent sections when publishing Earl Grey's instructions, before subsequently launching a sustained attack against the seizure of Māori lands.[46] Tamati Waka Nene, the Crown's trusted ally in the recent war, was evidently employed to reassure Northland Māori that there was no truth to the claims that their lands not under tillage were about to be seized.[47] But his influence over 'disaffected' Māori was necessarily limited, and rumours of continuing excitement persisted.[48] Indeed, even the supposedly arch-loyalist Nene was reported to have informed Henry Williams that if Heke and Kawiti had really fought for the land he would not have opposed them ('Me he mea, i wawae ratou mo te wenua; e kore a hau e wawae kia ratou').[49] Few Europeans in New Zealand – including Grey – were under any

[43] Robert FitzRoy, *Remarks on New Zealand, in February 1846*, London: W. & H. White, 1846, p.37; George Clarke [Jnr.], *Notes on Early Life in New Zealand*, Hobart: J. Walch & Sons, 1903, pp.67-70; Arthur S. Thomson, *The Story of New Zealand: Past and Present – Savage and Civilized*, vol.2, London: John Murray, 1859, pp.100-101; Grant Phillipson, 'Bay of Islands Maori and the Crown, 1793-1853', (Report commissioned by CFRT), August 2005, p.318.

[44] Clarke to Governor, 24 February 1845, GBPP, 1846 (337), p.22, [docs, vol.16, p.5434].

[45] Rutherford, p.168.

[46] *New Zealander*, 3 July 1847, [docs, vol.20, pp.6875-6876]; Orange, p.126.

[47] *New Zealander*, 4 October 1848 (letter from Henry Williams dated 31 August 1847), [docs, vol.20, pp.6889-6892]; G.W. Rusden, *Aureretanga: Groans of the Maoris*, London: William Ridgway, 1888, p.9.

[48] *New Zealander*, 1 January 1848, [docs, vol.20, pp.6881-6882].

[49] Williams to Grey, 1 December 1847, GBPP, 1849 (1120), vol.6, p.8, [docs, vol.17, p.5683].

doubt that renewed war in the north and elsewhere would follow as a certain consequence of attempting to implement the instructions.[50] As Tyrone Power wrote:

> There is scarcely any cause now that would array any *great force* of natives against us except the land question; and I put it to any reasonable person whether it is not more prudent, more Christian-like, and less expensive to pay for the land than to fight for it? One helping to bind the natives to good government and order; the other introducing bloodshed and murder into the land, utterly barbarising the natives, and destroying the prospects of the colony for years to come.[51]

Not all British politicians were ignorant of the policy-making constraints imposed by the colonial administration's relative weakness vis-à-vis the Māori population either. Sir Robert Peel, a former prime minister, commented privately to G.W. Hope in 1848, 'If the obligations of good faith vary with the military skill and prowess of the parties to a Treaty, the New Zealanders have put in a claim to be respected which it has become prudent on our part to recognize.'[52]

With prominent figures such as Bishop Selwyn and the missionaries, Chief Justice Sir William Martin and Attorney General William Swainson publicly leading the opposition to Earl Grey's policy, the governor's hand was strengthened. Although the Colonial Office viewed Grey as something of an 'Alarmist and Croaker', by April 1848 reports reaching London of the unrest created by Earl Grey's instructions amongst northern settlers and many Māori throughout the colony had forced the Colonial Secretary to deny rumours that the Crown intended taking lands forcibly and without regard for the provisions of the Treaty of Waitangi.[53]

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[50] Grey to Earl Grey, 3 September 1847, GBPP, 1847-1848 (899), pp.20-21, [docs, vol.17, pp.5634-5635]; Grey to Earl Grey, 20 August 1847, GBPP, 1847-1848 (899), pp.6-7, [docs, vol.17, pp.5631-5632].

[51] W. Tyrone Power, *Sketches in New Zealand*, London: Longman, Brown, Green, and Longmans, 1849, p.136.

[52] Peel to Hope, 19 February 1848, cited in Adams, p.245.

[53] Rutherford, pp.152, 171; Orange, p.128.

Governor Grey now broke his silence on the issue and suggested that the Crown did not need to confiscate the 'waste lands', since an 'allied principle' lay in pre-emption. In his view, the position was that:

> the Native population would, to the best of their ability, resist the enforcement of the broad principles which were maintained by Dr. Arnold; but that they will cheerfully recognize the Crown's right of pre-emption, and that they will in nearly all – if not in all – instances dispose, for a merely nominal consideration, of these lands which they do not actually require for their own subsistence. Even further than this: in many cases if Her Majesty requires land, not for the purpose of an absentee proprietary but for the *bona fide* purposes of immediately placing settlers upon, the Native chiefs would cheerfully give such land up to the Government without any payment, if the compliment is only paid them of requesting their acquiescence in the occupation of these lands by European settlers.[54]

Moreover rival tribes would, in Grey's opinion, 'cheerfully relinquish their conflicting and invalid claims in favour of the Government' provided some small reserves for cultivation purposes were set aside for them. In short, Crown recognition of native title to the 'waste lands' did not necessarily imply a costly and protracted process to extinguish this provided purchases were kept ahead of settlement:

> The only instances in which I have known the natives...to demand exorbitant prices...are those cases in which the lands were not validly purchased before a considerable European population was placed upon them; and the natives thus becoming aware of the value that had been given to their lands, and actuated by self interest, refused to part with them for a nominal consideration, but insisted on receiving a price bearing some slight relation to the actual value of the lands at the time the purchase was completed.

[54] Governor Grey to Earl Grey, 15 May 1848, *Epitome*, A.1, p.49.

In relation to chapter thirteen of the Royal Instructions dealing with the registration of lands, Grey therefore admitted that he had:

> deemed it inexpedient to disturb the present tranquillity of the country by calling upon the Natives generally to register their claims to land; but I have taken care, in as far as possible, to keep the land purchases of the Government so far in advance of the wants of the European settlers as to be able to purchase the lands required by the Government for a trifling consideration. What has then been done was to extinguish absolutely the Native title to the tract purchased, but to reserve an adequate portion for the future wants of the Natives, which reserves were registered as the only admitted claims of the Natives in that district; and they have been furnished with plans for these reserves, and with certified statements that they were reserved for their use, which documents are somewhat in the nature of a Crown title to the lands specified in them, are much esteemed by the Natives, and accustom them to hold land under the Crown, which is an extremely desirable object to attain.[55]

Nor would the 'trifling consideration' to be paid be an injustice to Māori, in Grey's view, since:

> the real payment which they receive for their waste lands is not the sum given to them by the Government, but the security which is afforded, that themselves and their children shall for ever occupy the reserves assured to them, to which a great value is given by the vicinity of a dense European population. They are also gradually becoming aware that the Government spend all the money realized by the sale of lands in introducing Europeans into the country, or in the execution of public works, which give employment to the Natives, and a value to their property, whilst the payment they receive for their land enables them to purchase stock and agricultural implements.[56]

[55] Governor Grey to Earl Grey, 15 May 1848, *Epitome*, A.1, p.50.

[56] Governor Grey to Earl Grey, 15 May 1848, *Epitome*, A.1, p.50.

Grey's argument that the 'real payment' for Māori lands would come from the increased value of the reserves which they retained was a familiar one, underpinning the Crown's purchase policy in New Zealand since the time of Normanby's Instructions. But his belief that the only way in which the 'waste lands' could be acquired for a nominal consideration was by using the rigorous enforcement of the pre-emption provision in the Treaty to purchase vast tracts of land ahead of the needs of the settlers was grounded in the early experiences of the colonial administration.

### 2.4 Pre-Emption Waiver

Although initial sales to the settlers had been highly profitable to the Crown, especially in the Auckland area once Hobson had decided to establish it as the colony's capital,[57] this did not continue. Economic downturn – attributed by some critics to incoming settlers having expended all their capital on purchasing lands from the Crown[58] – and a growing awareness among Māori, especially those close to the larger settlements, as to the monetary value Pākehā attached to their lands, made Normanby's scheme for the financially self-supporting colonisation and development of New Zealand almost impossible to sustain. Hobson's successor, Governor Robert FitzRoy, was provided with almost no funds for the purchase of land by a penny-pinching Imperial administration. Indeed, by the beginning of 1844 the local government was in debt to the tune of £24,000, unable to pay the salaries of its own staff and denied credit from any bank.[59] FitzRoy was forced to issue debentures simply to keep the government functioning, an action which subsequently formed a prime cause of his recall as governor of New Zealand.[60] Meanwhile, some Māori, resentful of the government's inability to purchase

[57] In 1841, for example, forty-four acres of a 3000 acre block in central Auckland, which had been purchased from Ngati Whatua for £281, sold at public auction for £24,275. Hobson to Secretary of State for the Colonies, 5 August 1841, *Epitome*, A.1, pp.30-31; Charles Terry, *New Zealand, its Advantages and Prospects as a British Colony*, London: T. & W. Boone, 1842, pp.131-135.

[58] FitzRoy to Stanley, 15 October 1844, *Epitome*, A.1, p.34; Richard Taylor, *Te Ika a Maui, or New Zealand and its Inhabitants*, London: Wertheim and Macintosh, 1855, pp.260-266.

[59] FitzRoy, p.25.

[60] Thomson, vol.2, p.101; Jonathan Adams, 'Governor FitzRoy's Debentures and their Role in his Recall', NZJH, vol.20, no.1, 1986, pp.44-63.

lands offered to it and by evidence of profiteering at their expense in respect of those blocks it had managed to acquire and resell, joined a growing chorus of agitation for the abolition of pre-emption.[61]

Bowing to combined settler and Māori pressure, in March 1844 FitzRoy waived pre-emption and permitted direct private purchases to take place on payment of a ten shillings per acre tax. In the depressed economic conditions prevailing this was still enough to prevent all but 2337 acres from changing hands, however, and in October 1844 FitzRoy reduced this to one penny per acre, leading to the rapid alienation of 100,000 acres, mostly in the Auckland area.[62]

FitzRoy had been careful to ensure some safeguards were put in place to protect Māori interests before waiving the Crown's exclusive right to purchase. Pā sites and wāhi tapu were excluded from the measure, and the Protector of Aborigines was to thoroughly vet and examine each transaction.[63] In addition, both proclamations stated that one-tenth of the land purchased of fair and average quality was to be conveyed to the Crown for public, and especially Māori, purposes.

When announcing the waiving of pre-emption to a meeting of Auckland Māori in March 1844, FitzRoy told them that the chief reason the government had originally sought the exclusive right to purchase their lands was to prevent them from selling great quantities of their tribal estate before they knew the real value of it. He advised them to only alienate lands they could spare and at the best obtainable price and declared that he would not allow them to alienate any lands required for their own use.[64] Yet this kind of advice, combined with the fact that the penny an acre proclamation had generated negligible income for the government and made it more difficult for it to purchase lands itself, set the Colonial Office against FitzRoy's waiver scheme (of which it had had

[61] FitzRoy to Stanley, 15 April 1844, GBPP, 1844 (131), vol.4, pp.24-25, [docs, vol.24, pp.8105-8106]; Rose Daamen, 'The Crown's Right of Pre-Emption and FitzRoy's Waiver Purchases', (Waitangi Tribunal Rangahaua Whanui Series), August 1998, p.63.

[62] Ward, *National Overview*, vol.2, pp.112-113.

[63] Extract from *New Zealand Gazette*, 26 March 1844, *Epitome*, A.1, pp.32-33

[64] Minutes of a Meeting of Native Chiefs, Auckland, 26 March 1844, GBPP, 1845 (131), vol.4, pp.43-44, [docs, vol.16, pp.5374-5375].

ambivalent feelings about from the outset).[65] In November 1844 Lord Stanley reminded the governor that:

> the original intention of that [pre-emption] provision of the treaty was to enable the Crown, as the sole purchaser, to obtain land on easy terms from the native tribes, applying a proportion of the proceeds, when re-sold, to the importation of labourers, and the remainder to other public objects, but especially to the purchase of more land, to be again re-sold at a profit, and this operation to be repeated *toties quoties*.[66]

He objected to the waiver of Crown pre-emption therefore because this would:

> tend to render more difficult the acquisition of land from the natives by the Crown, and will encourage the disposition on the part of the natives to make exorbitant demands for their land; and I must confess...it appears to me that, in your conference of the 26th March, you enforced more than was required, the caution as to disposing lightly of their property.[67]

This remarkable despatch makes it clear that, from the Colonial Office's perspective at least, pre-emption had always been viewed as a source of finance for the Crown, rather than as a protective mechanism for Māori. FitzRoy's pre-emption waiver regulations would, Stanley feared, prove an impediment to the old scheme of government-sponsored colonisation funded at the expense of Māori, who – becoming aware of the market value of their lands – might dare to make 'exorbitant demands' based on what a private purchaser would be prepared to pay. Instead, in the period after 1846, Māori would be

[65] Adams, pp.202-203.

[66] Stanley to FitzRoy, 30 November 1844, GBPP, 1845 (131), vol.4, p.54, [docs, vol.24, p.8117].

[67] Stanley to FitzRoy, 30 November 1844, GBPP, 1845 (131), vol.4, pp.49-56, [docs, vol.24, pp.8112-8119].

once again required to subsidise the colonisation of their country – only this time on a far grander scale.

### 2.5 Grey's Land Purchase Policy, 1846-1853

Governor George Grey, FitzRoy's successor from the end of 1845, was instructed that although the ten shillings per acre system might remain in force for the northern half of the North Island alone, the Colonial Secretary favoured the re-introduction of a strict right of pre-emption throughout the colony.[68] Grey complied with Stanley's wishes in no uncertain terms, refusing to sanction any further waiver purchases while more permanent measures were put in place to ensure the successful re-imposition of Crown pre-emption.[69] Whereas the Land Claims Ordinance of 1841 had merely declared as void all claims to land (whether leased, purchased or gifted) not recognised by the Crown, Grey's Native Land Purchase Ordinance of 1846 made private land deals a criminal offence punishable by fines of between £5-100 for first and subsequent successful prosecutions.[70] Although the preamble to Grey's ordinance stated that the right of pre-emption had been obtained by treaty in order to further the 'peaceable and prosperous colonization of New Zealand', it said nothing about the protection of Māori interests. This was perhaps not surprising, given the ordinance involved not merely the formal reimposition of the pre-emptive right contained in the Treaty of Waitangi, but also set about construing this right once and for all in a narrow and rigid way as conferring on the Crown an exclusive right of purchase or lease. A broader construction of the right, based on the te reo Māori text signed at Waitangi and elsewhere, might have confined pre-emption solely to purchasing and involved merely a first right of refusal. But Grey's strategy for the acquisition of Māori 'waste lands' had as a critical plank the prevention of direct leasing agreements with settlers, which were also outlawed under the ordinance, along with private timber or mineral arrangements. In effect, the only legal option Māori

[68] Stanley to Grey, 14 August 1845, GBPP, 1846 (337), vol.5, p.85, [docs, vol.24, p.8130].

[69] Grey to Earl Grey, 10 December 1845, GBPP, 1846 (712), vol.5, pp.18-19, [docs, vol.16, pp.5557-5558].

[70] Native Land Purchase Ordinance (No.19) 1846, *Ordinances of the Legislative Council of New Zealand 1841-1853*, [docs, vol.24, pp.8176-8177].

were left with if they wished to gain a revenue from their lands was to sell these to the Crown.[71]

Ironically, too, while FitzRoy had been conscious of the need to safeguard Māori interests when waiving pre-emption, Grey abolished one of the earliest and most important protective mechanisms for Māori at the same time that he was planning to use the Crown's newly-restored exclusive right of purchase on an extensive scale. In April 1840 George Clarke, a CMS missionary who had been in New Zealand since 1824, was appointed Chief Protector of Aborigines, in accordance with Normanby's instructions that such an office be established at an early date.[72] Although initially expected to both protect Māori interests and at the same time acquire their lands, by December 1842 Clarke's requests to be relieved of the latter duty (which severely undermined his ability to perform the former) were accepted. Clarke had reported to the governor in September 1841 that, although he had 'made two or three important purchases of land on behalf of the Crown', these had:

> led to various remarks among the natives, more or less prejudicial to my duties as chief protector; they being apprehensive that their interests in connexion with this department are less studied than those of the government. On this point I have been unable fully to satisfy them, great pains having been taken by inconsiderate Europeans to show them the incompatibility of the two duties, as well as the great disproportion between the price the government gave for their lands, and the amount they realised when resold.[73]

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[71] See Vincent O'Malley, 'The Ahuriri Purchase', (Report commissioned by CFRT), April 1995, p.59ff; John C. Weaver, 'The Construction of Property Rights on Imperial Frontiers: The Case of the New Zealand Native Land Purchase Ordinance of 1846', in Diane Kirkby and Catharine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire*, Manchester: Manchester University Press, 2001, pp.221-239; Ann Parsonson, 'Nga Whenua Tautohetohe o Taranaki: Land and Conflict in Taranaki, 1839-59', (Revision of Report No.1 to the Waitangi Tribunal), 1991, Appendix 2, pp.184-199.

[72] Donald M. Loveridge, 'An Object of the First Importance: Land Rights, Land Claims and Colonization in New Zealand, 1839-1852', (Report commissioned by the Crown Law Office), February 2004, pp.64-65.

[73] Clarke, Half-yearly report to Governor, 30 September 1841, GBPP, 1842 (569), vol.3, p.190, [docs, vol.24, p.8092].

Hobson, in forwarding Clarke's report to the Colonial Office, expressed some support for this view, noting that:

> Hitherto purchases of land from the Natives have been effected through Mr. Clarke; but his dealings with them in these matters interfere in some measure, I fear, with his conservative vocation of Protector; for although he, as an individual, acts most conscientiously both towards the Natives and the Government, yet there is no natural connection between the office of a land commissioner who buys land for the Government and that of protector of the rights and liberties of the aboriginal proprietors of the soil. The New Zealanders are a shrewd people, and are not a little apt to attribute all the kindness and advice Mr. Clarke may offer them to the more sordid view of obtaining their lands; besides which, he is often obliged to place himself in a false position with regard to them while resisting their unreasonable demands for large payments.[74]

Yet despite Colonial Office agreement that combining the twin duties of protector and purchaser in one official was 'clearly improper' and 'objectionable',[75] it took the best part of a year for Clarke to be relieved of his land-purchasing responsibilities. Clarke was informed in November 1842 that he would be relieved of responsibility for undertaking new purchases (though still expected to complete those already under negotiation) from 31 December 1842.[76] However, further instructions issued prior to the end of the year clarified that, whenever the Surveyor-General should recommend any lands for purchase, Clarke would be required to report on the willingness of Māori to sell these and to note what reserves he considered might be required for their benefit out of such lands.[77] This was far from the clean break required, and indeed there is some

[74] Hobson to the Principal Secretary of State for the Colonies, 15 December 1841, *Epitome*, A.1, p.119.

[75] CO 209/10, p.237a, cited in Loveridge, 'An Object of the First Importance', pp.71-72.

[76] William Connell (for Colonial Secretary) to Chief Protector of Aborigines, 25 November 1842, *Epitome*, C, p.152.

[77] Connell (for Colonial Secretary) to Chief Protector of Aborigines, 29 December 1842, *Epitome*, C, p.152.

evidence that Clarke may have continued to negotiate some purchases after he had supposedly been relieved of these duties at the end of 1842.[78]

In March 1846 Clarke, in writing to the Colonial Secretary commented that:

> The duty of purchasing such lands as were considered desirable for the Government out of those offered by the natives was imposed upon me, and it was not until I repeatedly appealed to the Governor, pointing out the incongruity of the duties of an agent for the purchase of land with those of protector of aborigines, that his Excellency was pleased to relieve me from the unpleasant and anomalous task; but this act of justice came too late to prevent the evil which resulted from the false position in which, as land-agent for the Government, I had been placed.[79]

The lengthy missive within which Clarke made these remarks followed his receipt just over a month earlier of a letter announcing Governor Grey's intention to 'remould' (meaning abolish) the Protectorate Department:

> and expend such portion as the Colony can afford of the large sum that establishment has hitherto cost annually upon schools, hospitals and other institutions for the natives, and such a change will in His Excellency's opinion produce more practical and lasting benefits for the aborigines than are likely to fall from the Protectorate Department.[80]

Seeking to justify this step, Governor Grey explained to the Secretary of State for the Colonies that upon his arrival in New Zealand:

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[78] Loveridge, 'An Object of the First Importance', p.75, fn.166.

[79] Clarke to Colonial Secretary, 30 March 1846, GBPP, 1847 (837), vol.5, p.14., [docs, vol.16, p.5594].

[80] Colonial Secretary to Clarke, 6 February 1846, G 25/2, Arch-NZ, cited in David Armstrong and Tony Walzl, 'Overview of Crown Policy with Respect to Endowments and Expenditure on Maori, 1840-1860', (Report commissioned by the Crown Law Office), n.d., Wai-27, X6, p.14.

> I found that a department, termed that of the Protector of Aborigines, was maintained at an annual cost of about two thousand and five hundred pounds, of which sum about one thousand pounds was appropriated to the salaries and allowances of Mr Clarke and two of his sons, and that not a single hospital, school, or institution of any kind supported by the Government was in operation for the benefit of the natives.[81]

Few settlers mourned the demise of the Protectorate; even some missionaries remained critical of its performance. As Bishop Selwyn noted in 1845:

> the most that can be said of the Protector's Establishment is, that it has remedied many of the evils which would have resulted from colonization: but I question, whether it has tended to fulfil any one of those high and even holy purposes, to which the British Government is pledged by the tenor of its earliest instructions.[82]

'In abolishing the Protectorate at a time when he was about to embark on a massive land purchase programme', Grey, as the Waitangi Tribunal's *Ngai Tahu Report* noted, effectively 'recombined the role of land purchase officer with that of the protection of Maori interests'.[83] Hence after 1846 Māori land rights were again supposedly under the protection of Crown officials whose primary responsibility was to acquire land for settlement. This did not augur well for the protection of Māori interests; and as Alan Ward observed, '[t]here was not again to be a department of government so sensitive to Maori viewpoints and the absence of it was to be extremely serious in the next decade.'[84]

Yet the palpable failure of successive colonial administrations to deliver the promised benefits of British 'civilisation' to Māori was undoubted. The penny-pinching approach

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[81] Grey to Stanley, 10 May 1846, G 30/9, Arch-NZ. [Unable to be copied].

[82] Selwyn to FitzRoy, November 1845, CO 209/49, pp.307b-442b, cited in Loveridge, 'An Object of the First Importance', p.280.

[83] Waitangi Tribunal, *Ngai Tahu Report*, p.272.

[84] Alan Ward, *A Show of Justice: Racial "Amalgamation" in Nineteenth Century New Zealand*, Auckland: Auckland University Press/Oxford University Press, 1973, p.73.

of Imperial administrators had seen Hobson and FitzRoy struggle simply to keep the basic functions of government going, let alone purchase Māori lands on an extensive scale or construct schools, hospitals and other institutions for their benefit. Provided with the huge sum of £218,727 in grants-in-aid from the Imperial government over a seven-year period,[85] Grey was not only able to implement his policy of acquiring large areas of land ahead of the needs of settlement and at 'trifling' prices, but was further enabled to link this to a significantly expanded provision of schools, hospitals and other material benefits to Māori. These, under Grey and his successors prior to 1865, would form an integral element of 'the real payment' promised Māori for their lands.

The policy was not a new one, of course, but had its origins in Normanby's Instructions of 1839, which had justified the low purchase prices to be paid to Māori with reference to the enhanced value of their remaining lands following Crown investment of the profits from onselling lands to the settlers at significantly higher prices in developing the colony. In January 1841, Normanby's successor, Lord Russell, had taken this policy a step further, instructing Hobson that:

> As often as any sale shall hereafter be effected in the colony of lands acquired by purchase from the aborigines, there must be carried to the credit of the department of the protector of aborigines a sum amounting to not less than 15, nor more than 20 per cent. in the purchase-money, which sum will constitute a fund for defraying the charge of the protector's establishment, and for defraying all other charges which, on the recommendation of the protector, the governor and executive council may have authorized for promoting the health, civilization, education and spiritual care of the natives.[86]

In 1842 the Chief Protector of Aborigines was informed that the funds thus received were to be directed at 'promoting the health, civilization, education, and spiritual care of the aborigines' and was to be overseen by a committee of trustees, consisting of the Chief Protector, Chief Justice and Anglican Bishop of New Zealand.[87] However, with

[85] Loveridge, 'An Object of the First Importance', p.282, fn.686.

[86] Russell to Hobson, 28 January 1841, GBPP, 1841 (311), vol.3, p.52, [docs, vol.24, p.8068].

[87] Shortland to Clarke, 26 July 1842, *Epitome*, D, pp.3-4.

the cash-strapped colonial administration unable to purchase Māori lands for want of funds, minimal revenue was generated and the costs of the Protector's office swallowed up much of what little money was received.[88] The Protectorate, Grey believed, was 'an utterly useless establishment' during whose time 'the Government had done absolutely nothing for the native race'.[89]

Grey demonstrated that he meant business following the abolition of the Protectorate in 1846, quickly overseeing the erection of four hospitals (at Auckland, Wellington, Wanganui and New Plymouth), which were open to both Māori and Pākehā patients, though primarily aimed at the former.[90] An Education Ordinance passed in 1847 introduced state subsidies for mission schools which met certain criteria (including instruction in the English language),[91] while the Resident Magistrates Court Ordinance of 1846 provided the framework for the appointment of salaried-Māori Assessors, composed of the leading chiefs of each district, who were empowered to adjudicate on minor disputes within their communities under the supervision of Resident Magistrates.[92] Loan funds were also made available to Māori communities for the purchase of livestock, agricultural implements, flourmills, ships and other desirable items and pensions provided to leading chiefs – including special annuities paid to Tamati Waka Nene and other Northland chiefs under an 1847 ordinance for their aid in 'suppressing rebellion'.[93]

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[88] Waitangi Tribunal, *Ngai Tahu Report*, p.273.

[89] Grey to Earl Grey, 4 February 1847, GBPP, 1847 (837), vol.5, p.92, [docs, vol.24, p.8085].

[90] See Vincent O'Malley, '"Where is the Doctor for the Maoris?" Te Tiriti o te Ahuriri and the Provision of Health Services to Central Hawke's Bay Maori, 1851-1940', (Report commissioned by CFRT), March 1999, pp.33-35; Waitangi Tribunal, *The Napier Hospital and Health Services Report*, Wellington: Legislation Direct, 2001, pp.86-88; Derek A. Dow, *Maori Health and Government Policy*, Wellington: Victoria University Press, 1999, pp.26-35.

[91] See J.M. Barrington, 'Northland Language, Culture and Education: Part One: Education', (Report commissioned by CFRT), December 2005, pp.26-28; Judith Simon and Linda Tuhiwai Smith (eds), *A Civilising Mission? Perceptions and Representations of the New Zealand Native Schools System*, Auckland: Auckland University Press, 2001, pp.159-160.

[92] Ward, *Show of Justice*, pp.74-84; Alan Ward, 'Law and Law-enforcement on the New Zealand Frontier, 1840-1893', NZJH, vol.5, no.2, 1971, pp.128-149.

[93] GBPP, 1847-1848 (1002), pp.91-92, 185, [docs, vol.17, pp.5648-5649, 5680].

Although many of these measures were undoubtedly of some assistance to Māori, this was not their sole, or even main, purpose. Grey's policies were instead directed primarily at extending Crown control and influence over Māori communities – whilst furthering their assimilation into colonial society. The Assessors, for example, were intended to secure Māori adherence to English laws in districts previously governed solely in accordance with Māori custom, while Grey described the hospitals as being of great importance 'for the diffusion of civilization...and also as a means of gaining their attachment to the British Government and the British race'.[94] Not all settlers appreciated the logic behind Grey's so-called 'flour and sugar' policies, however, and as a new constitution for the colony (and probable settler self-government) were under contemplation, the governor took measures to ensure an ongoing source of funding for expenditure on Māori purposes. In 1851 Grey proposed that an annual sum of £7000 be reserved on the Civil List for Māori purposes on the basis that Māori contributed 'largely and increasingly to the revenue' of the colony but would be 'wholly unrepresented' in the provincial and central assemblies to be established under the new constitution.[95] Grey added that:

> In naming the sum that will be required for native purposes, I have supposed that, as under Lord John Russell's original instructions, the Governor-in-Chief would still, if a necessity for his doing so should arise, be authorized to apply 15 per cent. of the land fund to such purposes; and that the General Government alone would have the power of treating with the natives for the purchase of their lands.[96]

Grey thus viewed the £7000 (which was accordingly placed on the Civil List under the 1852 Constitution Act) as merely baseline funding for Māori purposes and assumed a discretion to apply part of the land fund to these purposes.

Explaining his continuing prerogative to appropriate up to 15% of the land fund for Māori purposes, Grey observed that:

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[94] Grey to Earl Grey, 13 February 1852, GBPP, 1854 (1779), vol.9, p.73, [docs, vol.24, p.8151].

[95] Grey to Earl Grey, 4 August 1851, GBPP, 1852 (1475), vol.8, p.32.

[96] Grey to Earl Grey, 4 August 1851, GBPP, 1852 (1475), vol.8, pp.32-33.

> as the Natives have been given to understand, on many occasions, in disposing of their land, that the proportion of the land fund above alluded to would if necessary be expended in promoting their welfare; and as it has also been frequently explained to them that such expenditure of part of the land fund, rather forms the real payments for their lands than the sums in the first instance given to them by the Government, it will be proper, so long as such a course is necessary, to continue to expend one fifteenth of the gross proceeds of the land fund in promoting the benefit and civilization of the native race, regarding this expenditure as one of the several items of expenditure which are necessarily incurred in extinguishing the native title to lands which are purchased for the Crown.[97]

In Grey's conception, then, funds expended in promoting Māori welfare – rather than the 'nominal' sums advanced at the time of deed signings – formed the 'real payments' for Māori land. Indeed, it was only through promising these longer term benefits that the Crown would be enabled to overcome Māori opposition to the low purchase prices offered them. As Donald Loveridge has noted, it 'was a fundamental premise of the preemptive purchase system, readily and repeatedly acknowledged by the Crown, that Maori would receive ongoing benefits from land sales in many different ways'.[98]

### 2.6 The Nature of Crown Promises

Crown promises to Māori relating to 'the real payments' for their lands coming not simply from the immediate payments received for these but from the longer-term benefits which would be gained with Crown assistance have been frequently traversed in many previous inquiries by both Crown and claimant historians and by the Tribunal itself. It would seem unnecessary to repeat much of the evidence here – including the explicit statements of successive governors – were it not for the fact that, ignoring the

[97] Grey to Wynard, 2 September 1852, G 32/1, Arch-NZ. [Unable to be copied].

[98] Donald M. Loveridge, 'Ngati Whatua and the Crown – The First Quarter-Century: An Appraisal of the Wyatt Report', (Report commissioned by the Crown Law Office), April 2001, p.158.

general consensus of opinion on this subject, Crown counsel has argued in various inquiries that the statements of Crown land purchase officers did not constitute explicit promises to Māori so much as non-binding explanations as to the likely consequences of transacting lands.[99]

Perhaps one exchange of letters exemplifies the nature of Crown undertakings better than most. In June 1852 a Taranaki chief, Parata Te Huia, wrote to the local land purchase commissioner, G.S. Cooper:

> Listen to the word of my father of Parata te Huia. He says that when he has received into his hand the payment for the Putatutanga for his land, that is all – his dealings with the Governor will cease. He does not like his (the Governor's) price for land, it is a bad price – a small price. It will be better to put a stop to his purchases of land, because the payment is wrong, it is a bad payment to the Maories, but he receives a large payment from the Europeans. Where is the good of this thought that it should be large to you and small to us. ...
>
> The Europeans have a great desire to buy land and are willing to give one pound ten shillings per acre for fern land and for bush land two pounds ten shillings. What is there then of good of the Governor's payment 5/- and half a crown per acre. This is bad, therefore let his purchasing of land be put a stop to. I do not like him because his regulations are bad.[100]

The chief's questions were eminently sensible ones: even leaving aside the restrictions against direct dealings with settlers reintroduced after 1846, why should he sell his lands to the Crown at half the price Pākehā were prepared to pay? Cooper's response outlined the reasons – and capture the crux of Crown land purchase policy between 1846 and 1865 – in detail:

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[99] Waitangi Tribunal, *Napier Hospital Report*, pp.107-108; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wellington: Legislation Direct, 2004, pp.115-116.

[100] Parata Te Huia to G.S. Cooper, n.d. [c.24 June 1852], McLean Papers, MS-Papers-0032, folder 676c, ATL, in 'Documents Supplied by the Crown', June 1999, Wai-201, W10, pp.3150-3154.

> My friend I am sorry to hear you say you will cease to sell land to the Governor. I am afraid you have been listening to some foolish pakehas, who have been trying to lead the young men astray. Listen to me – suppose they buy your land do you think they will give you 30/- an acre for fern land and 50/- for bush? Not at all. They may talk as they like now, but you will find they would act very differently. And suppose they did give such prices, would they return any portion of the land to you as the Governor does or would they expend any of the money in roads, in bridges, in Hospitals, in Schools, in sending out more Europeans to cultivate the land and to buy more afterwards, and to bring cattle, horses, sheep, carts, ploughs, machines, blankets, tobacco and the thousand things of the pakeha.
>
> My friend it is in this manner that the Governor gives a high price for the land. What although the price to the maories is small and a higher sum is received from the pakehas, the difference in price is not for the Governor – no, it goes back partly on the land in making roads, in building bridges over the rivers, and in surveys, partly in works for the good of the maories, in Hospitals, in Schools, in churches, partly for the good of us all, in paying large sums for ships to bring out more Europeans from England that our land may increase in population, in wealth and prosperity, besides which there is always a large piece of the best land reserved for you. *These are the real payments the Governor gives for land – not the mere money paid at the time of purchase, for that is but a small matter.*[101]

Are we really expected to believe that the recipient of this letter, in the light of Cooper's myriad statements as to the future benefits which would arise from agreeing to transact the lands in question – and in the light of his statement that these rather than 'the mere money paid at the time of purchase' constituted 'the real payments' – could conceivably have interpreted such a document simply as the work of a humble soothsayer? Such a conclusion would appear to stretch credulity well beyond breaking point.

[101] Cooper to Te Huia, 26 June 1852, McLean Papers, MS-Papers-0032, folder 676c, ATL, in 'Documents Supplied by the Crown', June 1999, Wai-201, W10, pp.3155-3158. [Emphasis added].

The more familiar Ngāi Tahu story also belies the purchase agent as mere prophet of future prosperity depiction favoured in some Crown submissions. Walter Mantell, who undertook negotiations for the 20 million acre Kemp block in 1848, later wrote privately to John Symonds, who had negotiated the Otakou purchase that:

> in making purchases from the natives I ever represented to them that though the money payment might be small, their chief recompense would lie in the kindness of the Govt. towards them, the erection & maintenance of schools & hospitals for their benefit & so on – you know it all.[102]

Although he had been happy enough at the time to confine the Ngāi Tahu owners to a miserly ten acres of reserves per person in the interests of ending their 'old barbarism on the rents of an uselessly extensive domain',[103] Mantell's outlook altered somewhat in the mid-1850s. Apparently incensed by a seemingly minor incident, the refusal of the general government to provide books for the Ruapuke mission school,[104] Mantell took up the issue of various unfulfilled promises made to Ngāi Tahu during the course of his and others' negotiations. After resigning his position as commissioner of Crown lands in Otago and moving to London, Mantell took up the issue of these unfulfilled promises with the Colonial Office, informing the Secretary of State for the Colonies that Ngāi Tahu had been induced to cede their lands for an 'almost nominal money payment' chiefly '[b]y promise of more valuable recompense in schools, in hospitals for their sick, and in constant solicitude for their welfare and general protection on the part of the Imperial Government'.[105] Asked by the Colonial Secretary as to the authority under which he had made these promises, Mantell replied that:

> Lieutenant-Governor Eyre...impressed upon me the propriety of placing before the Natives the prospect of the great future advantages which the cession of

[102] W. Mantell to J.J. Symonds, 21 August 1855, cited in *Ngai Tahu Report*, p.951.

[103] Mantell to Governor Grey, 13 March 1851, cited in Alan Ward, 'A Report on the Historical Evidence, the Ngai Tahu Claim, Wai27', Wai-27, T1, 1989, p.162.

[104] Ward, 'Ngai Tahu Claim', p.339.

[105] Mantell to Secretary of State, 5 July 1856, in Alexander Mackay (comp.), *A Compendium of Official Documents Relative to Native Affairs in the South Island*, vol.2, Wellington: New Zealand Government, 1872, p.82.

> their lands would bring them in schools, hospitals, and the paternal care of Her Majesty's Government, and...I found these promises of great use in my endeavours to break down their strong and most justifiable opposition to my first commission, and in facilitating the acquisition of my later purchases, adding to the Crown lands an area nearly as large as England.[106]

These instructions, Mantell explained, had been left unwritten, partly because it was deemed unwise to commit to paper promises of separate institutions which ran contrary to the general desire for eventual assimilation of Māori into the mainstream of colonial life. As he further commented:

> Had I myself been justified in entertaining any fear that the Government would fail in fulfilling promises (verbally given on authority, only verbal for reasons which I considered valid), I should not have hesitated to insert them in the text of those Deeds of Cession which I drew. But Sir George Grey, during whose Government all of my purchases were made, seldom, to the best of my recollection, refused any reasonable request on behalf of these Natives, nor had I ground for believing that his successor would be less just.[107]

This matter was eventually referred back to the New Zealand government for comment, with Governor Thomas Gore Browne informing the Colonial Secretary that:

> I am satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial Government have been held out to the Natives to induce them to part with their land.[108]

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[106] Mantell to Merivale, 31 July 1856, in *Compendium of Official Documents*, vol.2, p.84.

[107] Mantell to Merivale, 31 July 1856, in *Compendium of Official Documents*, vol.2, p.84.

[108] Gore Browne to Colonial Secretary, 9 February 1857, cited in Waitangi Tribunal, *Ngai Tahu Report*, p.953.

In 1879 a Royal Commission on Middle Island Native Land Purchases (the Smith-Nairn Commission) was appointed to investigate the issue as to whether there were any unfulfilled promises arising from the various Ngāi Tahu transactions.[109] After hearing considerable testimony on this question, the Commission concluded that there were indeed such outstanding promises made, a conclusion no doubt assisted by the evidence of Sir George Grey, who was informed by one of the Commissioners that:

> Mr. Mantell...states that he made promises to the natives that schools, hospitals & other advantages would be received by them hereafter, and he is borne out by the instructions that he was directed to impress upon the mind of the natives that the money consideration was not the only nor the principal consideration they were to receive.[110]

Grey replied that he had 'no doubt' this was true, '*because those were the instructions I always gave*. They were the instructions I gave in the old Hawkes Bay purchase[s], and I explained that the payment made to them in money was really not the true payment at all.' Prompted once again to confirm that Mantell was indeed authorised to negotiate on the basis of such promises, Grey was emphatic in response, declaring 'I am certain he was authorised. I am certain I would have told him myself to do it, because I have over and over again explained it to them.'[111]

The former two-time governor had turned populist premier in the 1870s, and certainly was not above attempts at rewriting his place in history, especially before a commission appointed by his own administration. Even so, Grey's testimony in 1879 was remarkably similar to his correspondence with the Colonial Secretary from more than three decades earlier. Stripped of its slippery denials of personal responsibility for the plight of Ngāi Tahu, Grey's evidence nevertheless pointed to a more fundamental basis to the South Island land transactions. As southern chiefs had

[109] Waitangi Tribunal, *Ngai Tahu Report*, p.958.

[110] Evidence of Sir George Grey, 6 December 1879, MA 67/4, Arch-NZ, p.648, reproduced in Vincent O'Malley, '"The Treaty of Ahuriri:" Supplementary Evidence...in Relation to the Ahuriri Purchase of 1851', (Report commissioned by CFRT), September 1997, Appendix 2.

[111] Evidence of Sir George Grey, 6 December 1879, MA 67/4, Arch-NZ, pp.648-649, in O'Malley, 'Treaty of Ahuriri', Appendix 2.

informed Henry Tacy Clarke in 1864, they had 'placed full reliance upon the Government giving full effect to its engagements'. This was never simply about schools and hospitals, important though these were, but rested on the Crown promise 'to undertake the task of ameliorating their condition, as part of the consideration for their lands'.[112]

The key, as Grey and his officials appreciated, was that Māori entered into land transactions with the Crown not simply with a view to the short-term monetary gains to be had upon receipt of the purchase price, but rather with a view to the longer-term benefits expected to accrue to their communities. At a fundamental level, such arrangements were viewed by most Māori not as real estate deals but as important political expressions of the nature of the particular group's relationship with the Crown. This point was not lost on Grey or his key advisers. Grey, as noted earlier, had informed the Secretary of State for the Colonies as early as 1848 that in some instances Māori would 'cheerfully' give up lands to the Crown without payment 'if the compliment is only paid them of requesting their acquiescence in the occupation of these lands by European settlers'. No doubt he had been influenced in reaching this conclusion by statements such as those made to him by Whanganui Māori in March 1846, when informed by Mete Kingi and Kawana Paipai that 'it was good they should be paid as soon as possible for their land as they had waited very long but still even if they were not paid they yet were agreeable to the Europeans settling amongst them as they themselves were a payment for the land meaning by being purchasers of their goods and the means of bringing European commodities to the place'.[113] As the then Native Secretary, Donald McLean, observed in 1858:

> It is well ascertained that the New Zealand tribes regard their land as a National property, the cession of which when decided on, they prefer making as a National act to Her Majesty, even while they are aware, that the sums to be realized by such cessions are inconsiderable. Nor do they generally attach

[112] H.T. Clarke to Colonial Secretary, 29 September 1864, in *Compendium of Official Documents*, vol.2, p.90. Similar arguments continued to be used by Crown purchase officers in Northland in the 1870s. See, for example, T. McDonnell to J. Knowles, 7 August 1873, *Epitome*, C, p.204.

[113] Richard Taylor Journal, 18 March 1846, q-MS 1988, ATL, cited in O'Malley, 'Treaty-Making in Early Colonial New Zealand', p.133.

> so much importance to the pecuniary consideration received for land held by them in common, as to the future consequences resulting from its alienation.[114]

The same point was made by McLean's assistant, T.H. Smith, who declared that Māori did not regard the extinguishment of native title over a block of land 'merely as a mercantile transaction but as an important national act',[115] as well as by the 1856 Board of Inquiry on Native Matters, which concluded that:

> The price with them is a secondary consideration. If they can make up their minds to sell, it is a proof that they are impressed with the necessity of the new order of things which has been introduced, and to which they know they will ultimately have to conform; or, that seeing advantages to be derived, they, by the sale of land, court its influence. More or less, every transfer of land may be looked upon as a national compact, and regarded as binding both parties to mutual good offices.[116]

The 'real payment' for Māori lands, then, involved not merely specific economic advantages promised by Crown purchase agents during the course of negotiations, but at a deeper level the establishment and maintenance of a relationship of mutual benefit with the Crown (and more broadly the European settlers who would locate themselves on the lands in question). As James Belich has suggested, the terms of these localised agreements were by no means mutually shared. Whereas Māori tended to view them primarily in terms of a partnership, and expected to maintain ongoing control over their own affairs within an overall framework of mutual cooperation for the benefit of all, the Crown and settlers could not – at least at a theoretical level – see beyond the primacy of their own institutions and ideas, even whilst being pragmatic enough to accept the reality

[114] Memorandum by the Native Secretary, 25 June 1858, AJHR, 1858, E-1, p.15, [docs, vol.12, p.3785].

[115] Report by Assistant Native Secretary on the Native Territorial Rights Bill, 28 June 1858, AJHR, 1858, E-1, p.17, [docs, vol.12, p.3788].

[116] Report of the Board of Inquiry on Native Matters, 9 July 1856, GBPP, 1860 (2719), vol.10, p.240, [docs, vol.17, p.5829].

of ongoing Māori assertions of autonomy, at least for a time.[117] Substantive British sovereignty would be attained on the ground not merely through the act of purchasing Māori lands, but through substantially settling these with incoming Pākehā, displacing Māori in the process and supplanting the rule of law in the place of tikanga and custom. In the north, as the following chapters will show, that process (summed up by Belich in the term 'swamping')[118] was not one which occurred prior to 1865. Northland Māori remained firmly in control of their own affairs and the possibility of forging – or rather of reviving – a meaningful partnership with the Crown remained a tangible one. In the late 1850s this was a prospect eagerly embraced by Northland Māori as they looked to revive their fortunes after more than a decade of neglect and non-engagement on the part of the Crown.

[117] James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, Auckland: Penguin Press, 1996, pp.202-203.

[118] ibid., p.226.

# 3. Northland Māori and the Crown, 1840-1858

## 3.1 Introduction

By 1840, as Dr Phillipson has recently reminded us, Northland Māori had maintained a relationship with representatives of the British Crown of almost half a century's duration.[119] Beyond the fleeting visit to the Bay of Islands of Captain James Cook and the crew of *Endeavour* in 1769, and the ill-fated voyage of the Frenchman Marion du Fresne in 1772, there are no known further encounters between Northland Māori and Europeans prior to 1793, when two young men were kidnapped off the Cavilli group of islands and taken to Norfolk Island under the orders of the local governor there, Philip Gidley King.[120] As Anne Salmond says, this was 'a strange way to create an alliance', but the subsequent kindness shown by Governor King to the two rangatira, Tuki and Huru, during their six-month stay on Norfolk, and their subsequent safe return to Northland in the company of King (and the many gifts he showered them with), created a favourable impression of the 'Kawana', who was remembered fondly by northern Māori more than 50 years later.[121] Salmond notes that the gifts presented to Tuki and Huru by King were widely distributed in the north, establishing reciprocal ties with the governor which were further deepened and reinforced in later years, when other Māori visited King in Port Jackson with return gifts of their own.[122]

By 1820, when Hongi Hika met with King George IV in London, the Northland Māori world had changed significantly. Pigs, potatoes and maize had become well-established and were being traded with the regular European vessels to visit the north, a permanent Pākehā presence had been established on the ground, initially through the Church Missionary Society, and the musket had been introduced to Māori warfare. On

[119] Phillipson, p.208ff.

[120] ibid.; Anne Salmond, *Between Worlds: Early Exchanges Between Maori and Europeans 1773-1815*, Auckland: Viking, 1997, pp.205-211, 518-525.

[121] Salmond, p.207; Phillipson, p.208.

[122] Salmond, p.233.

top of all this, Hika's meeting with King George established, in Northland Māori tradition, an alliance of friendship and mutual protection between the British and Māori, which was renewed in the 1831 petition to King William, and further evidenced in the appointment of James Busby as British Resident in 1833 and again in the 1835 Declaration of Independence.[123] Te Tiriti o Waitangi may have marked the commencement of a relationship between the British Crown and some Māori groups, but in the north it constituted merely the intensification of a long-established relationship, begun in earnest in 1793 and first formalised in the 1820 meeting between Hongi Hika and the British monarch.[124] This was a relationship or alliance placed under severe strain by the mid-1840s, neglected for more than a decade thereafter, and renewed, both symbolically and materially, from the late 1850s.[125] It was also a relationship which, throughout this period, was – whether being negotiated, ignored or revived – largely played out within a context of ongoing Māori independence and authority.

### 3.2 Settlement Patterns

According to the conservative estimates of Professor Ian Pool, by 1840 Māori outnumbered Pākehā by a ratio of approximately 40 to 1 across New Zealand.[126] In the north where, with the possible exception of the southern whalers based around

[123] Phillipson, pp.213-254; Manuka Henare, 'The Changing Images of Nineteenth Century Māori Society – From Tribes to Nation', PhD thesis, Victoria University of Wellington, 2003, pp.160-201; Orange, pp.6-18.

[124] Phillipson, p.254.

[125] The phrase 'relationship or alliance' is used advisedly. It is not being suggested here, for example, that a formal 'alliance', imposing contractual obligations on both parties above and beyond those entered into in 1840, was established. Instead, the term 'alliance' is used as a kind of shorthand to describe the evolving relationship between northern Māori and the Crown – a relationship, it is argued, in which rangatira did not see themselves as subordinate to government officials and the expectations and obligations of which changed over time. Northern leaders themselves often referred to their 'union' (whakakotahitanga) with the Queen, or sometimes to a 'hono', a joining together or marriage of the two peoples. Clearly, Crown officials did not share such a view of the relationship at a conceptual level, and certainly did not consider it a partnership of equals, even if in reality they were often required to interact with northern chiefs on a basis of rough equality in order to establish any kind of influence over the Northland region in the period to 1865.

[126] Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present and Projected*, Auckland: Auckland University Press, 1991, p.58. Pool bases this on a likely Māori population of between 70,000-90,000 and a European population of approximately 2000.

Fouveaux Strait, the largest concentration of Europeans was located, the ratio was significantly less than this. Of the 1300 Europeans estimated to be residing in the North Island in 1839, Adams calculates that perhaps 500 to 600 were based in the Bay of Islands, with a further 200 or more at Hokianga.[127] Others have suggested that the Bay population remained fairly static at around 600 Europeans by 1840, with an influx of 'respectable' settlers and land speculators counter-balanced by the departure of a number of escaped convicts in the period preceding the arrival of the Crown.[128]

Ernst Dieffenbach, who visited Whangaroa in 1841, noted that besides a few missionaries, about a dozen other Europeans, mostly sawyers, were residing in the district.[129] Dieffenbach also commented that in all of the harbours between the Hauraki Gulf and the Bay of Islands Europeans were settled.[130] However, their numbers do not appear to have been great. It is estimated, for example, that as late as 1845 there were just 48 settlers resident in the Whangarei district.[131] All in all, therefore, based on the very imprecise information available to us, a Pākehā population of no more than about 900 was probably resident in Northland in 1839.

Dieffenbach estimated the 'Nga-pui' population at this period resident in the Whangaroa, Bay of Islands and Hokianga districts at 12,000.[132] He also believed that there were 'but very few natives' resident at Mahurangi or Whangarei.[133] Although commenting that he did 'not pretend to anything like accuracy', Dieffenbach's estimates were at least based on personal observation.[134]

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[127] Adams, pp.26-27.

[128] Kathleen Shawcross, 'Maoris of the Bay of Islands, 1769-1840: A Study of Changing Maori Responses to European Contact', MA thesis, University of Auckland, 1967, (Table: Growth of the European Population Residing at the Bay, 1830-1840), pp.351-352; Jean Hedges, 'Demographic History of the Bay of Islands: 1814-1899', MA thesis, University of Auckland, 1987, pp.21-23.

[129] Ernest Dieffenbach, *Travels in New Zealand*, vol.1, London: John Murray, 1843, p.237.

[130] ibid., p.287.

[131] A.M. Rust, *Whangarei and Districts' Early Reminiscences*, Whangarei: Mirror, 1936, p.25.

[132] Dieffenbach, vol.2, pp.74-75, 83.

[133] ibid., vol.1, p.287.

[134] ibid., vol.2, p.81.

In the absence of a more detailed demographic study, and accepting Dieffenbach's figures for the time being, Pākehā can be estimated to have constituted approximately 7% of the total Northland population as at 1839, giving a ratio of about 14 to 1 Māori to Europeans, with considerable local variations contained within this. Obviously, for example, at the Bay of Islands Europeans constituted a larger proportion of the population. Yet whereas in other areas the Pākehā population climbed steadily (or in some cases, such as Auckland, dramatically) over the following decade, at the Bay of Islands and Hokianga it appears to have fallen. In 1842, for example, the European population of Russell and Waimate was estimated at 380, but by 1850 this had dropped to 303.[135] And in the Hokianga district the decrease was even more significant, dropping from a base of 263 in 1842 to just 97 in 1850.[136]

Although the European figures increased thereafter, and the Māori population continued to decline until at least the 1870s, Fenton's 1857 census recorded the total Māori population for the Whangaroa, Hokianga, Bay of Islands and Whangarei districts at 5686.[137] Thus with the exception of Whangarei and Mahurangi, Māori appear to have remained numerically dominant throughout the rest of the Northland area through until at least the 1860s (and in some cases thereafter).[138] In the Hokianga district, for example, one 1866 return estimated the Māori population at 3300 and the settler population at just 300.[139] At the same time the respective returns for the Mangonui district (which included Whangaroa) were 2761 (Māori) and 447

[135] B.G. Hardie et.al. (comps), *Statistics of New Zealand for the Crown Colony Period 1840-1852*, Auckland: Auckland University College, Department of Economics, 1954, Table 1, p.8.

[136] ibid.

[137] 'Table Showing (as far as can be ascertained) the Aboriginal Native Population of New Zealand', F.D. Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, Auckland: New Zealand Government, 1859. Fenton's list also included separate entries for Kaikohe, Waimate and Kawakawa, and Ngunguru, which have been included in the above figure. Mahurangi was not listed separately in Fenton's census but appears to have been included either under Mangawhai (105) or lower Kaipara (490). However, the numbers appear small. See Barry Rigby, 'The Crown, Maori, and Mahurangi 1840-1881', (Report commissioned by the Waitangi Tribunal), August 1998, p.135; Paul Goldsmith, *The Rise and Fall of Te Hemara Tauhia*, Auckland: Reed Books, 2003, pp.46-47.

[138] Robyn Anderson, 'Nga Hapu o Whangarei and Lands in the Stage Three Kaipara District', (Report commissioned by CFRT), July 2000, pp.165-167.

[139] James Clendon, Hokianga Native District Monthly Return, 30 June 1866, MA 24/21, Arch-NZ, [docs, vol.6, p.1953].

(European).[140] And although the Kororareka district reported a much smaller disparity (503 Māori against 357 Europeans) it seems likely that this encompassed a much smaller area than the whole of the Bay of Islands and in fact took in the area mostly heavily populated by Pākehā at this time.[141]

### 3.3 Tikanga Māori and British Law in the Early 1840s

Nominal British rule after 1840 did not, for the most part, dramatically interfere with the ability of Northland Māori to continue to govern their own affairs according to their own tikanga and customs, as they always had. Provided with a permanent force of just 100 troops to defend the entire colony by a penny-pinching Imperial administration, Hobson reported nervously after their intervention in a fight between some sailors and local Māori at the Bay of Islands in June 1840 that '[a] mere drunken brawl might have involved us in a war with half the country.'[142]

On the face of it, the arrest and subsequent execution of a high-ranking Bay of Islands chief, Maketu, a son of Ruhe, in 1841-1842 for the murder of local widow Mrs Roberton, her children, servant and a Māori child living with the family, suggest a ready ability to enforce English law. Yet, as Alan Ward has also noted, upon closer investigation the case appears in a rather different light.[143] It was only when Maketu's father consented to give up his son for trial that the accused was able to be taken into custody. According to Hobson, the only reason Ruhe had consented to the arrest of his

[140] W.B. White, Mangonui Native District Monthly Return, 1 July 1866, MA 24/21, Arch-NZ, [docs, vol.6, p.1955].

[141] R.C. Barstow, Kororareka Native District Monthly Return, 30 June 1866, MA 24/21, Arch-NZ, [docs, vol.6, p.1956]. Fenton's 1857 census had recorded the combined Māori population for the Bay of Islands, Waimate and Kawakawa, and Kaikohe (all listed separately), at 1894. It seems scarcely credible that this could have declined by more than two-thirds in the space of nine years, and in fact some reports suggest that the Māori population of some parts of the north had stabilised, or was even experiencing a modest increase, at this time. H.T. Kemp, for example, informed Fenton with respect to the Bay of Islands that '[a] perceptible increase in the population has taken place over many previous years, and the deaths are less frequent'. Fenton, *Observations on the State of the Aboriginal Inhabitants*, Memorandum No.1, p.2.

[142] Hobson to Gipps, 15 June 1840, GBPP, 1841 (311), vol.3, p.23, [docs, vol.16, p.5275]; Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832-1852*, Wellington: Department of Internal Affairs, 1968, pp.52-53.

[143] Ward, *Show of Justice*, p.53.

son 'was his apprehension that the Korarika [sic – Kororareka] tribes would kill him on the spot, in consequence of the murder of the native child, a grandchild of Rewa, who is the head of the Ngapuhis'.[144] As Ward suggests, surrender to the law 'was seen as a means of avoiding a greater calamity'.[145] Hobson admitted that had Maketu's crime 'been less atrocious, or had his guilt not been so clearly established...we should have had a severe struggle to carry the law into execution' and reminded the Colonial Secretary of his repeated applications for more troops.[146] Maketu had readily confessed to the murders, which were viewed with such horror by other northern leaders that had he been killed on the spot 'but little excitement would have been manifested'. Even so, Hobson noted that his apprehension had created 'such unusual excitement at the Bay of Islands' that Maketu had been quickly dispatched to Auckland for trial. In large part, Hobson explained, this unrest was because 'to expose him to an open trial, and then probably to the shame of a public execution, is considered a degradation on the whole aboriginal race'.[147]

Maketu is reported to have secreted letters out of prison in which he urged his relatives and supporters to murder the governor and launch a surprise attack on the troops, and according to Henry Williams a well-attended meeting at Kerikeri had vowed to 'revenge themselves, and wage war with the Europeans'.[148] An even larger hui was quickly convened, attended by rangatira from throughout the north, at which the chiefs denied all rumours of an intended massacre of Europeans. Their letters condemning Maketu's actions and declaring their desire to live at peace with the Pākehā (including, significantly, one signed by Ruhe) were subsequently printed in the first issue of the government-published Māori-language newspaper, *Te Karere o*

[144] Hobson to Secretary of State for the Colonies, 16 December 1841, GBPP, 1842 (569), vol.3, p.191, [docs, vol.16, p.5322].

[145] Ward, *Show of Justice*, p.53.

[146] Hobson to Secretary of State for the Colonies, 16 December 1841, GBPP, 1842 (569), vol.3, p.191, [docs, vol.16, p.5323].

[147] ibid.

[148] Thomas Beckham to Colonial Secretary, 3 December 1841, IA 1/1841/1556, Arch-NZ, [docs, vol.1, pp.53-55].

*Nui Tireni*, almost the entire issue of which was devoted to the Roberton family murders and their aftermath.[149]

Significantly, however, of those northern chiefs subpoenaed to give evidence against Maketu in the Auckland Supreme Court, one simply 'refused to answer any message on the subject'.[150] Two other chiefs consented to give evidence only on condition that the government agreed to provide free passage to and accommodation in Auckland during the duration of the trial not only for themselves but also for a number of other persons not required to testify, and that, in the event of sentence of death being passed, Maketu's execution should be 'stayed until they shall have returned to the Bay of Islands, anticipating as they do an unfriendly feeling from the Parents and Relations of Maketu'.[151] All of their conditions were complied with by the government, which appears to have taken no action against the chief who had simply ignored summons to appear in the highest Court in the land.

On 7 March 1842 Maketu became the first person to be executed under British law in New Zealand. With large numbers of Māori present from all parts of the country to witness the gruesome spectacle, the event passed off more quietly than even Hobson might have dared to hope (though, somewhat ironically, Chief Justice Sir William Martin, a leading humanitarian, subsequently earned a somewhat fearsome reputation among Māori for having dared to condemn a chief to death).[152] Yet just over four months later further extraordinary scenes followed. Immediately following the execution, the relatives of Maketu had requested and been refused the body, as was consistent with standard practice that saw the bodies of executed persons interred within the prison walls as the property of the Crown. In July 1842, following, it was

[149] *Te Karere o Nui Tireni*, 1 January 1842, [docs, vol.18, pp.6046-6049]. Translations by Dr. Jane McRae, May 2006.

[150] H.T. Kemp to Captain Richards, 16 February 1842, IA 1/1841/1556, Arch-NZ, [docs, vol.1, pp.66-67].

[151] Kemp to Colonial Secretary, 28 January 1842, 14 February 1842, IA 1/1841/1556, Arch-NZ, [docs, vol.1, pp.59-61, 63-65].

[152] Hobson to Secretary of State for the Colonies, 12 March 1842, GBPP, 1842 (569), vol.3, pp.192-193, [docs, vol.16, pp.5323-5324]; Thomson, vol.2, pp.51-52; Lady Martin, *Our Maoris*, London: Society for Promoting Christian Knowledge, 1884, pp.29-30; Guy Lennard, *Sir William Martin: The Life of the First Chief Justice of New Zealand*, Christchurch: Whitcombe and Tombs, 1961, pp.19-21.

alleged, a certain amount of intimidation or pressure from Māori, Maketu's body was exhumed under orders from Hobson and handed over to a party from the Bay of Islands for return home.[153]

Meanwhile, the *Bay of Islands Observer* was moved to note, in commenting on the Maketu case and many other alleged 'native outrages' in the north, that:

> The Maories are not, and cannot be, governed by the crown. Those who signed the treaty, and those who did not, alike disregard it as far as the government is concerned. They are as much ruled by their own customs, with the solitary exception of selling lands to the Europeans, as they ever were. The sovereignty over them on the part of Great Britain is entirely nominal.[154]

Among the many other 'outrages' observed by the newspaper was a case in which a Māori who killed another Māori was committed to the jail in Russell but released without trial upon the demands of others, and another involving infanticide of a half-caste baby in which the police took no steps against the perpetrator, even though her identity was well known. If Māori were to be regarded as British subjects, the editorial declared, '[t]hen Englishmen must surely have ceased to be so', and if they were not 'then why keep up the miserable farce?'

Significantly, in the former case the alleged perpetrator of the crime had not even been a local Māori, but instead came from Rotorua, and had killed another man – one of Henry Williams' shepherds – on what, as Phillipson has noted, 'Williams considered his exclusive land at Pakaraka'. Kawakawa Māori had freed the accused man after four days, believing the offence – which had been over a woman – was justified in customary terms and that in any event it was 'altogether a native affair'.[155] Crown intervention in purely Māori disputes was, therefore, strictly out of the

[153] *Bay of Islands Observer*, 4 August 1842, [docs, vol.18, pp.6245-6246]. By way of contrast, the descendants of Mokomoko, wrongly executed in 1866 for the murder of Reverend Volkner at Opotiki, were granted permission to exhume his remains only 120 years later, in 1988. Tairongo Amoamo, 'Mokomoko ?-1866', DNZB, vol.1, pp.291-292.

[154] *Bay of Islands Observer*, 10 March 1842, [docs, vol.18, p.6206].

[155] Phillipson, p.325.

question, regardless of the tribal origins of the offender. Northland Māori remained adamant on this point.

This was where the Maketu case proved really interesting – what if both Māori and Pākehā were involved? In that instance Northland Māori had *voluntarily* given the offender up to British law, apparently believing they had been meaningfully consulted over the case – a viewpoint which would appear to be endorsed by the various concessions made to their preferences both before and after the trial and execution. The decision had by no means been an uncontroversial one. According to George Clarke Jnr., Hone Heke was 'enraged at the surrender of the murderer Maketu, and thought that to hand him over for trial by an English jury and not by his own people was simply to efface the standing law of the Maori Blood Bond'.[156] T.L. Buick noted that Heke was incensed by 'this adhesion to law' and nursed a great sense of grievance thereafter.[157] Some two and a half years after the execution, when Governor FitzRoy visited the district, Heke placed a roughly carved head on a pole by the roadside, supposedly representing the governor. Tellingly, around the figure's head hung a rope.[158]

Tamati Waka Nene had been an instrumental figure in securing agreement for Maketu to be tried in a British Court and was viewed with suspicion by Heke and his followers as a consequence. Yet Nene might well have cited Hongi Hika's pact of friendship with King George IV in support of the decision to allow Maketu to be handed over to the authorities, given this had apparently included an agreement that the Māori and British peoples should not kill one another.[159] And at a more prosaic level violence towards Europeans was not good for business – the fate of the Whangaroa district, bypassed by vessels for decades after the 1809 *Boyd* incident, was proof enough of that. By the 1820s therefore acts of violence towards Pākehā became

[156] Clarke, p.68.

[157] T. Lindsay Buick, *New Zealand's First War, or the Rebellion of Hone Heke*, Wellington: Government Printer, 1926, p.33 .

[158] Ormond Wilson, *From Hongi Hika to Hone Heke: A Quarter Century of Upheaval*, Dunedin: John McIndoe for the author, 1985, p.253.

[159] Marsden to Darling, 18 April 1831, cited in Phillipson, pp.213-214.

severely frowned upon by Northland leaders.[160] Indeed, as Belich notes, while the musket wars raged around them, Europeans remained largely unharmed.[161] No tribe wished to earn a reputation that might jeopardise their future trading opportunities.

Europeans were still expected to observe tribal protocols and tikanga and could be severely punished for breaches of these, most commonly through the application of taua muru. Instances of these continued to be reported well after 1840. Yet increasingly large allowances were made for Pākehā 'ignorance'. By the 1820s Bay of Islands chiefs were overlooking insults issued to them by sailors; in one case a chief knocked overboard by a ship's mate took no action against him.[162] Chiefs were turning a blind eye to actions which, if committed by another Māori, might have been deemed capital offences.

Indeed, by the 1840s it would appear that only the most serious transgressions – usually involving breaches of tapu land – would necessarily provoke a strong Māori response. This was an issue which even the Crown was obliged to take seriously. In October 1840, for example, a customs house then in the process of being constructed at Kororareka was hastily pulled down upon the orders of Lieutenant-Governor Hobson when a deputation of local chiefs complained that the (presumably government-owned) land upon which it was sited was tapu on account of an urupa located there. Although workmen 'immediately commenced pulling down the timbers', it would appear that local Māori returned the next day to finish the job themselves.[163]

In 1842 William Carruth, who had settled on the site of what is now the Whangarei central business district in about 1840, was subject to a taua muru, supposedly (he later claimed) because the land had been made tapu many years before, when a party from the Bay of Islands had encamped there one night with the bones of some slaves,

[160] Shawcross, pp.291-297; Phillipson, p.70.

[161] Belich, *Making Peoples*, p.171.

[162] Shawcross, p.297; Phillipson, p.71.

[163] *New Zealand Advertiser and Bay of Islands Gazette*, 8 October 1840, [docs, vol.18, p.6188].

whose bodies they were returning home with. Carruth's own account of this incident, written many years later, noted that one of the dead had in fact been a relative of the chief who had led the taua, suggesting they may simply have been returning their war dead home, rather than the more lurid tales of cannibalism favoured in Pākehā accounts of the incident.[164] Yet further evidence from an official inquiry into the case (discussed below) suggests that the supposed take for the taua was a mere fabrication designed to make the Māori claim to tapu status look as weak (and contrary to British notions of 'civilisation') as possible and that the lands in question were in fact urupā. Either way, it was clearly felt that payment was required for a violation of tapu, not just by Carruth but many of the other European residents of Whangarei, who were also 'plundered' at the same time over a four-day period.[165]

Yet although some settler accounts of the incident predictably depicted the taua as a lawless mob using tapu as 'a pretext for exacting payment from the Europeans, and for committing robberies',[166] Carruth's own recollections suggest a much more orderly and ritualised affair. The party carried with them a letter from the missionary James Buller advising the settlers against resistance, which presumably was intended to prevent cross-cultural miscommunications.[167] And according to Carruth the taua provided him with advance notice of their intentions, and called at the time expected, at which point Carruth remonstrated with the chief at its head 'for allowing his pakeha to be robbed'. The unidentified chief responded that he could not possibly prevent the 'plunder' from proceeding, however, as there were valid claims on the land 'quite sufficient to justify him in robbing me' and that, in any event 'such things were common amongst themselves – that no gentleman ever resented them, in fact, they rather considered it an honour, especially if the "taua" was a large one'.[168] The chief advised Carruth to go and wash himself and put on his best clothes in preparation for their return. When Carruth refused, '[t]he old gentleman then went away rather

[164] Rust, p.61.

[165] *Bay of Islands Observer*, 7 April 1842, [docs, vol.18, pp.6213-6214].

[166] *Bay of Islands Observer*, 7 April 1842, [docs, vol.18, p.6212].

[167] *Bay of Islands Observer*, 7 April 1842, [docs, vol.18, p.6213].

[168] Rust, p.61.

displeased, remarking that we pakehas were very rude people, and he feared that he should never be able to make a gentleman of me'.[169]

On the face of it, it would appear that there was a large degree of cross-cultural misunderstanding to these proceedings. Yet the official report of the Chief Protector of Aborigines, George Clarke, suggests there may also have been a strong element of wilful ignorance on the part of the supposed 'victims' of this taua. After interviewing prominent Parawhau chief, Te Tirarau, Clarke reported that the chief, along with Paikea and several others, had determined in February 1842 to proceed:

> to the Sacred place of his Ancestors, to perform their sacred rites and having heard of the desecration committed by the Europeans of Wangari [sic] upon their sacred places where the remains of their dearest relatives were deposited, they came to the conclusion to remove them to more secure places, and as they had large demands upon Wangari not only on account of their sacred places but as owners of the land which had been sold to Mr. Mair, to whom they had repeatedly applied in vain for payment they concluded on quietly visiting the Europeans who were living upon their land and actually upon their "Wahi Tapus", and respectfully ask them for a payment for their profanation and for their daring trespasses concluding that they would take only what was given them by Europeans when they arrived at their residences. The first White residence they arrived at they quietly stated their object viz that they came to ask for a payment for their sacred places and for their land in general.[170]

According to Clarke's report the Europeans, having inquired what would satisfy the party, were asked to show them what they had. The taua then 'pointed out what they wanted, and took what was given them, expressing their satisfaction'. The taua had proceeded from house to house in this fashion, 'holding out no threats, making their demands grounded upon their never having been paid for the land and the sad desecration of their sacred places'. Having received 'a small equivalent' for their lands and wāhi tapu the party had returned peaceably to their homes, 'unconscious of

[169] ibid.

[170] Clarke to Colonial Secretary, 23 May 1842, MA 4/58, Arch-NZ, [docs, vol.24, p.8268].

having violated any Law of Equity, Human or Divine and considering the Europeans under great obligation to them for the very quiet way they had disposed of the case'. While Clarke believed that 'the whole of the Natives proceedings...reflect very great credit upon them', he was scathing of the Whangarei settlers, accusing Carruth in particular of swindling Māori out of their lands and bribing witnesses to provide false testimony before the Land Claims Commission.[171]

Clarke's blunt conclusions were all the more ironic considering that just a few months before this he had reached precisely the opposite verdict with respect to a further case of muru committed by the same group of Māori on another European accused of desecrating a wāhi tapu by stealing a skull from an urupā and placing it in his store. Indeed, in the case of the muru of Thomas Forsaith at Mangawhare, Clarke had considered the 'depredation' sufficient to demand the cession of a large area of land at Te Kōpuru in punishment for the crime.[172] Lord Stanley believed that the muru of Forsaith had not entirely been unprovoked and that in any event the policy of imposing a land penalty on Māori guilty of committing 'outrages' was 'of too questionable a propriety to be often repeated'.[173]

### 3.4 The Matakana Muru and Subsequent Takahiwai 'Cession'

Colonial Office unease at the application of such a policy was to be ignored just three years later, however, when a further taua muru involving Whangarei Māori resulted in the cession to the Crown of 1000 acres of extremely valuable land at Takahiwai, including the area known today as Marsden Point.[174] As the Bay of Islands slid

[171] Clarke to Colonial Secretary, 23 May 1842, MA 4/58, Arch-NZ, [docs, vol.24, pp.8267-8270]. Clarke later modified his view slightly, observing that he both pitied and blamed the parties to this affair, and suggesting that, although a payment had been justified for the lands 'unfairly sold to, and desecrated by the Europeans', the compensation demanded by Whangarei Māori had been excessive. However, he continued to maintain that they had no conception that they had done anything wrong, 'but returned home considering the Europeans had only complied with their just demands'. Clarke to Colonial Secretary, 16 December 1842, IA 1/1842/2232, Arch-NZ. [Unable to be copied].

[172] Waitangi Tribunal, *The Kaipara Report*, Wellington: Legislation Direct, 2006, pp.86-92.

[173] ibid., pp.91-92.

[174] Rigby, 'Crown, Maori, and Mahurangi', p.33.

towards war, at Matakana, in the Mahurangi district, the property of a settler named Millon and others in the area were muru'd on 6 January 1845, their cottages broken open, and 'plundered of every thing, leaving them perfectly destitute of clothing and bedding'.[175] The taua muru, which also travelled to Kawau Island, was immediately condemned by the government as a 'lawless robbery' and 'outrage'.[176] No motive was reported for this muru in some accounts of the incident, but in European eyes it was clearly linked to events at the Bay, including the recent theft of four horses belonging to Captain Hingston by 'the Kawakawa tribe' (presumably referring to Ngāti Hine).

Certainly this is how the governor appears to have viewed the matter. On 7 January 1845 the Executive Council was hastily convened to consider depositions taken from settlers caught up in the 'outrage committed by a number of Natives at Matakana and on the Island of Kawau'.[177] The following day evidence was taken from Henry Tayler (who was himself linked with a number of contentious land transactions in the Mahurangi district) and the Chief Protector of Aborigines, and a resolution passed by the Executive Council in favour of applying for an additional military force 'in order to support the Law, and prevent a repetition of such outrages'.[178] At the same time the Council approved a proclamation issued by FitzRoy on the same day, 8 January 1845, condemning the 'act of depredation' at Kawakawa and 'flagrant robbery, accompanied by personal violence...committed at Matakana by the Wangarei tribe'. FitzRoy's proclamation somewhat toothlessly declared that until the property of Hingston, Millon and others was restored to them, and 'until sufficient compensation' was made for injuries sustained and the alleged offenders were 'delivered up to justice' he would not consent to waive Crown pre-emption over any land belong to the 'Kawakawa or Wangarei tribes' or any tribes which may have harboured or assisted them in their endeavours. On a more practical level he did, however, offer a

[175] *New Zealander*, 7 June 1845, [docs, vol.20, p.6786].

[176] Sinclair (Colonial Secretary) to J.L. Heyd'n, 7 January 1845, IA 4/2, Arch-NZ. [Unable to be copied].

[177] Minutes of the Executive Council, 7 January 1845, EC 1/1, Arch-NZ. [Unable to be copied].

[178] Minutes of the Executive Council, 8 January 1845, EC 1/1, Arch-NZ. [Unable to be copied].

£50 reward for each of the alleged perpetrators of the crime delivered into the custody of the police magistrate in Auckland.[179]

Whether the Matakana muru had indeed been inspired by events further north is unclear from the sketchy information available. Certainly the leading figure behind it, Parihoro, was well-connected with the north, having both Ngāti Manuhiri and Te Parawhau tribal affiliations.[180] What is clear, however, is that he also claimed customary interests at Matakana – subsequently recognised by the Crown in an 1853 deed signed with him[181] – but previously ignored in Millon and Skelton's old land claim in this area.[182] One report of the muru, published in the *Southern Cross* on 11 January 1845, though declaring that 'no one can even think of the shadow of an excuse for such a wanton and unexampled outrage', noted that '[t]he natives themselves now say, that the reason why they proceeded to these extremities was that they had not received payment for some land which had been sold'.[183] According to Arthur Thomson, Millon had had his property destroyed 'for occupying lands which the natives considered their own'.[184]

FitzRoy had sent a rather cryptic note to the Colonial Secretary, Andrew Sinclair, on the same date his proclamation was issued, observing that:

> The result of my reflection is that I see more objections to the course I suggested yesterday than were apparent; and my present view is rather towards acting against the Wangari Natives only.
>
> Considering the nature and position of that place, a blockade might be easily effected (after duly warning all the settlers thereabouts).

[179] Proclamation, 8 January 1845, GBPP, 1846 (337), vol.5, p.23, [docs, vol.16, p.5435].

[180] Along with Kawerau affiliation. Rigby, 'Crown, Maori, and Mahurangi', p.94, fn.92.

[181] Auckland Deed 85, 1 November 1853, [docs, vol.22, pp.7308-7311].

[182] Rigby, 'Crown, Maori, and Mahurangi', pp.90-91.

[183] *New Zealand Spectator and Cook's Straits Guardian*, 22 February 1845 (reproducing report from *Southern Cross*, 11 January 1845), [docs, vol.24, p.8191].

[184] Thomson, vol.2, p.101.

> Canoes might be taken away, if not destroyed, and further punishment inflicted if necessary.
>
> Meanwhile a person might be sent to warn the settlers and demand compensation from the Natives.[185]

Clearly within two days of the Matakana muru the governor had determined – seemingly without any prior thorough investigation of the motives behind the actions of those involved in the taua muru – to take firm action against Whangarei Māori, though not 'the Kawakawa tribe'. And that 'firm action' would involve demanding 'compensation' from the tribe.

The nature of the compensation to be sought soon became clear. Although Mate, one of the three chiefs accused of being involved in the muru, was officially cleared of such accusations soon after,[186] he was nevertheless, for reasons which are unclear from the available sources, expected to cede lands to the Crown in compensation. According to one report, Mate, upon hearing of the reward offered for his capture, proceeded to visit the governor at the head of a large armed party. FitzRoy initially declined to meet with the chief on these terms, but when Mate ordered his followers to withdraw a short distance:

> a conference ensued, in which Mate, backed by such irrefragable arguments, established his innocence so completely to the satisfaction of the Governor, and that the testimony of the settlers was unworthy of any degree of credit, that his Excellency not only consented to withdraw his proclamation as far as Mate was concerned, but to soothe his wounded feelings and delicate sense of honour, actually made him a present of two horses and a considerable number of blankets.[187]

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[185] FitzRoy to Sinclair, 8 January 1845, (Dr.) Andrew Sinclair, Letters and Journals, 1844-1856, MS-1947, ATL. [Emphasis in original. Note: Some incorrect spacing between words and other minor errors in the typescript of this letter have been removed from the above quotation to improve readability].

[186] Proclamation, 31 January 1845, GBPP, 1846 (337), vol.5, p.24, [docs, vol.16, p.5436].

[187] *New Zealand Spectator and Cook's Straits Guardian*, 8 March 1845, [docs, vol.24, p.8192].

FitzRoy's proclamation exempting Mate from the reward previously offered was issued at the end of January 1845. Just a few days later 1845 George Clarke Snr. officially wrote to Henry Tacy Clarke, one of his sons employed as a Protector of Aborigines, to request that he accompany Mate and interpreter Edward Meurant to Whangarei in the government schooner *Albert* and that:

> On your arrival at that place you will proceed with Mate immediately to the residence of "Parihoro" and "Koukou". And with "Mate" you will endeavour to make provision for the return of the property taken by those Chiefs from the Europeans living at Matakana.

The Chief Protector further advised his son that:

> Mate has engaged that a piece of land of sufficient extent to compensate for the injury sustained by the parties shall be given up to the Government: it will therefore be your duty to assist him in making this arrangement and ascertain as correctly as possible the extent of the land which they may wish to cede to the Government.[188]

H.T. Clarke was to request the return of every item taken in the muru, 'and watch every opportunity of impressing upon their minds the great injury they are doing themselves and their country; and of the leniency of the Govt. towards them in acceding to "Mate's" wishes in thus settling this disgraceful business'.

Perhaps the truly 'disgraceful business' had been the government's determination to once again impose a land penalty contrary to the instructions of the Secretary of State for the Colonies and seemingly without prior investigation of Parihoro's very real grievances. From his perspective his lands at Matakana had already been sold from under his feet. Now further lands were to be taken from him for responding to this in accordance with Māori tikanga. The sketchy reports available to us portray the actual

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[188] George Clarke to H.T. Clarke, 4 February 1845, MA 4/1, Arch-NZ, [docs, vol.4, pp.1176-1177].

muru as a violent and senseless one (which it probably seemed to independent observers knowing nothing of Parihoro's claims on the land).[189] But as was seen in the case of the earlier muru at Whangarei in 1842 the reality was often far more orderly. Settlers in 'outlying' districts had strong incentives for suggesting otherwise, however, especially when their claims to the land which they occupied rested on a very insecure base.

George Clarke had recognised all of this in his report on the earlier Whangarei muru. This time, though, it would appear that the governor had pre-empted any investigation into the causes (or even the nature) of the muru at Matakana by his near immediate determination that its perpetrators should be punished and an example set for others – despite subsequently absolving Mate from involvement in the raid on the reported basis that the testimony of the settlers could not be relied upon. The crisis at the Bay of Islands was clearly playing heavily on his mind. H.T. Clarke was further advised that:

> On the Natives acceding to "Mate's" wishes in compensating the Govt. by ceding a piece of Land, it will be your especial duty to draw up a written agreement stating as near as possible the extent and boundaries of the same and get it duly signed by the parties and witnessed by Mr. Meurant and some intelligent Native.

A copy of this agreement has yet to be located and nor has H.T. Clarke's official report of proceedings.[190] Perhaps anticipating a negative response, FitzRoy appears to have kept quiet about the whole affair, failing to inform the Colonial Office of the land 'cession' and not even publishing in the *Gazette* a proclamation issued by him on 3 March 1845 which declared that:

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[189] For a further account of the muru see also *Auckland Chronicle*, 9 January 1845, [docs, vol.24, pp.8185-8186].

[190] IA 1/1845/304 (with IA 1/1867/2278), containing Clarke's report, could not be located, despite an extensive search, which included the papers of later commissions of inquiry appointed to investigate compensation claims arising from damages during the New Zealand Wars (with which the file was later forwarded).

> Whereas restitution – atonement – and compensation have been made for the robbery committed at Matakana; by the Chiefs Parehoro – Kokou – and others:–
>
> I will not take further proceedings against them – and I hereby give notice that my proclamation respecting those persons, dated the eigth day of January last – is this day cancelled – and is no longer valid.[191]

Despite FitzRoy's bluster, it seems unlikely that the government would have been in any position to impose a land penalty on Whangarei Māori without a significant (and sustained) military presence in the immediate area, and the sketchy sources available to us provide few clues as to the motives of Mate and others in agreeing to give up land to the Crown. What little information is available suggests that the hapū involved in this dispute may have been anxious to avoid conflating what was, in reality, a localised land quarrel with the bigger storm brewing to the north of Whangarei.

Certainly the prompt return of the plundered items is one indication that this may have been the case. Edward Meurant's private diary noted that he and Clarke had arrived at Whangarei on 6 February 1845, when they discovered that the 'stolen property' had already been given up to the Mairs. Despite this, on the following day Te Parawhau 'consented to give a piece of land to Government for the Pakeh[a] injured at Mataka[na]' and this was formalised on 8 February 1845, when the agreement was signed.[192] Meurant and the others returned to Auckland later that same day, but he returned just over a fortnight later to survey the block.

That survey would later be the subject of significant controversy. In 1861 the Kaipara District Commissioner, John Rogan, reported that:

> On the south side of Whangarei harbour there is a block of land called Poupouwhenua, which was ceded to the Government many years ago by the

[191] Robert FitzRoy, Proclamation, 3 March 1845, *Proclamations Re Heke and Mate*, Auckland: Government Printer, [1845], ATL.

[192] Edward Meurant, Diary, 6-8 February 1845, MS-1635, ATL, [docs, vol.24, pp.8469-8470].

> Chief Mate and others in payment for a robbery committed at Matakana, the inland boundary of which is disputed by the Natives. I have examined on the ground the boundary mark, and am of opinion that the Natives are laboring [sic] under a false impression as to the boundary of the land, and am supported in this view by Mr. Clarke, who accompanied the surveyor who marked out the boundaries at the time.[193]

No copy of Meurant's plan has been located. However, the plan attached to the 1854 deed of cession for the Takahiwai block shows this as being bounded on the south by 'Land surrendered to the Govt. for Parihoro's Robbery at Matakaka [sic]'.[194] A map of the Whangarei district which appears to have been completed by J.G. Johnson in about 1858 shows the Poupouwhenua area as a roughly square shaped block of 5000 acres sharing a boundary with the Ruakaka purchase.[195] This depiction is contradicted by a further historical map, from the early 1860s, which shows a gap between the two areas.[196] According to this later map a parcel labelled 'Henry' (presumably a private grant or claim) lay between the two areas. This map indicated a more or less four-sided area of 4800 acres and depicted the Marsden township as a roughly triangular area on the north-eastern tip of the Poupouwhenua peninsula.

However, the Ruakaka deed of 16 February 1854 had shown the Poupouwhenua area to be about 3700 acres and roughly triangular in shape.[197] The Ruakaka deed plan indicated that Poupouwhenua did not share any significant length of boundary with Ruakaka. The sketch plan with the Takahiwai deed of 7 July 1854, on the other hand, indicated that the Poupouwhenua area was originally a four-sided area.[198] The

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[193] J. Rogan to McLean, 5 June 1861, AJHR, 1861, C-1, p.102, [docs, vol.12, p.3908].

[194] AUC 304, LINZ, [docs. vol.22, p.7395]. A more legible version of this plan was reproduced in Turton's Deeds. See Paula Berghan, 'Supporting Papers for Block Research Narratives Related to Crown Purchasing 1840-1909', Vol.6, p.3859.

[195] J.G. Johnson map, c.1858, MS 156, AWMML.

[196] NZ Map 4313, ACL. http://www.aucklandcity.govt.nz/dbtw-wpd/maps/maps.html

[197] AUC 309, LINZ, [docs, vol.22, 7423-7427]; Turton's Deed No.96, Province of Auckland, pp.127-128, in Berghan Supporting Papers, vol.6, pp.3543-3544.

[198] AUC 304, LINZ, [docs, vol.22, pp.7394-7398]; Turton's Deed No.100, Province of Auckland, pp.136-137, in Berghan Supporting Papers, vol.6, pp.3552-3553.

Takahiwai transaction apparently extended the original ceded area by adding two triangular shaped parcels, extending the northern boundary out to the Takahiwai Stream and the western boundary out to the Ruakaka purchase. This plan indicated that a roughly four-sided area of perhaps 1000 acres on the north-eastern tip of the ceded area had been set aside as a town reserve. There was no plan with the Poupouwhenua transaction of 14 July 1854.[199] However the boundary description indicated that it took in all of the Poupouwhenua cession, as shown in the Takahiwai plan, and all of the Takahiwai purchase as well. Given the level of confusion among Crown officials who depicted a different area of land (and what is more a differently shaped area of land) on a number of different occasions, John Rogan had a bit of a cheek in claiming local Maori were 'laboring under a false impression as to the boundary of the land'.

Meurant had been instructed at the time of the original survey to deliver a letter to Parihoro and Koukou, who would 'go with you round the boundary lines of the piece of Land given to the Govt. as compensation for the Robbery at Matakana'. He had also been instructed by the Chief Protector to request that Koukou and his party 'send the agreement of transfer made by Mr. James Busby to my office', adding that there were 'in all four documents in the hands of the Natives which it might be desirable to procure'.[200]

The lands selected for cession to the Crown just happened to encompass a portion of the vast estate claimed by James Busby by virtue of his old land claims. Busby informed the government of this fact in March 1854, when he discovered that a local settler, Duncan Mackenzie, had employed a surveyor to mark off an 80-acre section prior to applying to the government for the purchase of the land. Busby informed the Colonial Secretary that:

> Mr Mackenzie stated that the land he proposed to apply for is part of 1000 acres which, he said, had been conveyed to the Government by a native chief

[199] AUC 403, LINZ, [docs, vol.22, pp.7494-7501]; Turton's Deed No.101, Province of Auckland, pp.137-138, in Berghan Supporting Papers, vol.6, pp.3553-3554.

[200] Clarke to Meurant, 11 February 1845, MA 4/1, Arch-NZ, [docs, vol.4, p.1178].

named Parihoro, by way of indemnity for some outrage the said Parihoro had committed at Matakana.[201]

Busby claimed to have purchased the land in question 'from all the native proprietors, including Parihoro himself' in 1839 and asserted that any subsequent conveyance, including to the Crown, was therefore necessarily invalid. Although this prompted some debate among Crown officials as to the status of the lands, William Gisborne, the Under-Secretary for Lands, appears to have settled the matter when he declared that 'if the Native owner [sic] divested himself previously of his ownership of the land, – that very fact alone makes the land Crown land'.[202] Effectively the lands had been confiscated twice over for good measure: once under the government's 'surplus lands' provisions (even if never specifically surveyed for these purposes) and a second time for Parihoro's crime in defending his ownership of lands at Matakana, occupied by Pākehā without his permission.

### 3.5 The Slide to War

Within weeks of the February 1845 cession of lands to the Crown at Takahiwai, the township of Kororareka in the Bay of Islands had been attacked by anti-government forces, causing its European inhabitants to flee in terror and precipitating a civil war amongst Ngāpuhi which would soon involve British troops fighting alongside those Māori who had aligned themselves on the government side in the conflict. A short while after this, in April 1845, the settlers of Whangarei were themselves again plundered, causing them to also flee to Auckland at the end of that month.[203] Whether the events at Takahiwai were a trigger for the subsequent sacking of Whangarei is not something disclosed by the sources. In fact, it would appear from some sources that the sequence of cause and effect at Whangarei might be reversed; that is, the settlers, hearing unfounded rumours that a party from the Bay of Islands was headed south to

[201] Busby to Colonial Secretary, 22 March 1854, IA 15/5E, Arch-NZ, [docs, vol.24, p.8235].

[202] Gisborne, minute, 23 May 1854, IA 15/5E, Arch-NZ, [docs, vol.24, p.8238].

[203] Rust, p.21; James Buller to Gilbert Mair, 15 May 1845, MS-Papers-2485, ATL, [docs, vol.10, pp.3328-3331].

kill them all, had fled as a result, as a consequence of which some Whangarei Māori had 'yielded to temptation' and taken some of their abandoned property.[204] Tirarau, upon hearing of the plundering, 'very sharply upbraided' the offending party for their conduct, according to James Buller, 'calling them fools and cowards and...that they should take the consequences alone for he would have nothing to do with them'. He, along with Wiremu Pohe and Manihera, then took charge of various settler properties to protect them from further damage.[205]

Prior to the plundering at Whangarei Tirarau had written to the governor to deny rumours that he had joined forces with Hone Heke, and declaring that he would 'sit in peace together with our Europeans' ('kia noho pai ano matou me o matou pakeha'), whose lives he vowed to defend with his own.[206] Later, at a critical phase in the war, he is said to have refused Heke passage through his territory, informing the chief that he could 'do it, but you must first travel over my head',[207] thus effectively blocking a rumoured attack on Auckland. Grey thanked Tirarau for his friendliness to Europeans at the conclusion of the conflict and vowed to do all he could to 'promote the prosperity and happiness' of the chief and his people.[208] Yet during the conflict itself a nervous eye was constantly kept upon the chief. In September 1845, for example, FitzRoy ordered the commanding officer of the troops in the Bay of Islands not to launch any operations against Ngunguru 'because the Chief Tirarau is very jealous of Waka's...advance in that direction: and such a movement might induce Tirarau – now neutral – to assist the Rebels'.[209]

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[204] In fact, several of the settlers had filed detailed claims for compensation before they had even returned home to assess the extent of their losses, causing FitzRoy to describe their application as 'flippant'. FitzRoy, minute, n.d. [c.June 1845], IA 1/1849/302, [docs, vol.1, p.302].

[205] James Buller to Gilbert Mair, 15 May 1845, MS-Papers-2485, ATL, [docs, vol.10, p.3328-3331].

[206] Te Tirarau to Governor, 2 April 1845, IA 1/1845/622, Arch-NZ, [docs, vol.1, pp.155-156].

[207] Rogan to T.H. Smith, Native Secretary, 28 September 1861, AJHR, 1862, E-7, p.5, [docs, vol.12, p.4031].

[208] Grey, marginal note on Tirarau to Governor, 1 July 1846, IA 1/1846/974, Arch-NZ, [docs, vol.24, p.8230]; Anderson, p.33.

[209] FitzRoy to Colonel Despard, 9 September 1845, Letterbook of Governor FitzRoy and Governor Grey, vol.1, p.5, Auckland City Library, [docs, vol.11, p.3442].

Crown officials thus clearly recognised that customary imperatives remained the critical factor in explaining the actions of Tirarau and other northern chiefs at this time. For Tirarau – as indeed for Tamati Waka Nene, Kawiti, Hone Heke and the other rangatira caught up in the war – maintaining and upholding their mana was the primary consideration beyond all others. This is not to suggest that the war was simply a customary conflict. Quite clearly it necessarily involved a range of considerations beyond simply customary ones, given the involvement of Crown forces in the conflict. Yet it is equally evident that the crucial difference was that whereas Nene and the other so-called 'friendly' chiefs were reassured by Crown promises that their mana would be recognised and their ability to govern the internal affairs of their people left untouched, Heke and his followers remained unconvinced (and others such as Tirarau preferred to keep their options open). Matters of mana remained pre-eminent throughout the conflict. All of the Māori parties to the war shared the same underlying objective, differing simply in their opinion as to whether their long-established alliance with the Crown remained the best means to this end.[210]

There were, though, other issues at stake. These, in a sense, were closely related to the overriding desire of all Northland Māori to continue to control their own affairs free of unilateral Crown interference. As FitzRoy later acknowledged:

> the removal of the seat of government, in 1841, from the Bay of Islands to Waitemata or Auckland, caused very great dissatisfaction to the natives of the northern districts, living near that Bay and Hokianga. They soon discovered that the restraints and inconveniences of the newly-constituted authority which they had consented to acknowledge, however reluctant to obey, remained to interfere with them; while the countervailing advantages of augmented traffic, and good markets, were not only lost – gone to their greatest enemies – but that even the trade enjoyed previous to 1840 was almost destroyed by the Custom House regulations, and by the presence of government officers at Kororareka – (now called Russell).[211]

[210] James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland: Auckland University Press, 1986, pp.30-36; Phillipson, pp.320-328.

[211] FitzRoy, p.14.

The Crown was unable to meaningfully intervene in internal Māori matters at this time. Even an 1841 proclamation intended to prevented unauthorised felling of kauri and other valuable timbers by non-Māori except under license from the Crown met with a vigorous response. Henry Williams later recalled that this prohibition 'tended seriously to disturb and unsettle the minds of all classes of the community and Waka particularly declared that if the Governor were present he would cut down a Kauri tree before him and see how he would act'.[212] In fact, Tamati Waka would have been perfectly entitled to do this: the government dared not take any action against Māori felling timber on their own lands and even distributed a notice offering the assistance of the Protector of Aborigines in the sale of such lands and reassuring Māori 'that they may cut either for their own use or for sale any quantity of Timber they please on their own Grounds'.[213] Yet given that a valuable trade had developed in leasing lands to settlers for timber felling purposes throughout the north, this concession barely assuaged Māori. Although the Crown realised that it could not directly encroach on matters internal to the tribes, through its control of the customs houses at Russell and elsewhere, its efforts (not always successful) to prevent settlers from dealing directly with Māori for their lands, and decisions such as the location of the capital, the government had already had a major indirect impact on Northland Māori. This was where economic issues intersected with questions of authority and mana.

As the Chief Protector of Aborigines reported following a hui with Hokianga Māori in September 1844:

> they said they were now extremely poor; a few years ago they were able to procure not only necessaries, but luxuries; now they were reduced, as I might see, to an old thread-worn blanket; and they had been given to understand that this was in consequence of their having signed the Treaty of Waitangi. They were now obliged to carry their produce from one end of the river to another, in order to get a fig of tobacco, and after spending a whole day, often returned

[212] Enclosure in Williams to CMS, 1 May 1847, cited in Phillipson, p.325.

[213] James Fisher, Attorney-General, Opinion as to Timber on Crown Lands, 14 September 1841, IA 1/1841/1053, Arch-NZ, [docs, vol.1, pp.38-40].

> disappointed. They had been told that the reason the Europeans could not now buy their produce was, that the demands of the Government for money were so great, that they had none to buy their produce; they confessed they felt these remarks, especially as they (from a conviction that their approval of the late Governor, and signing the treaty would tend to prosperity) had taken such an active part in getting the treaty signed; and after having taken such an active part in welcoming the Governor, and then to see him removing from them to Auckland was too much for them, and not treating them well...[214]

Although the hui ended with the declaration that they would take no part in Heke's affairs, it was clear that even those northern Māori who remained 'friendly' to the government viewed the Treaty of Waitangi, from an economic perspective, as a total failure. It was the same elsewhere in the north. Whangaroa Māori, for example, asked why Pomare and Waikato of the Bay of Islands should have a monopoly on what ships did continue to visit the north and observed '[w]hat right has the Queen of England to prevent vessels from coming to this place (not being a port of entry)?'[215] Even the settlers of Kororareka observed, in a January 1844 address to the governor, that:

> shipping, once so numerous here, has almost entirely abandoned our port, money has nearly ceased to circulate among the natives and Europeans, and internal trade has consequently disappeared; and such is the state of this place at present, that if some speedy change do not take place. Kororarika, the oldest settlement in New Zealand, and situated in the finest harbour, must soon be deserted.[216]

FitzRoy observed that whereas in the 1830s between 20 and 40 vessels were commonly to be found at the Bay of Islands, after 1840 there were 'seldom more than

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[214] Clarke to Colonial Secretary, 30 September 1844, GBPP, 1845 (369), vol.4, p.39. [docs, vol.16, p.5413].

[215] FitzRoy to Stanley, 29 September 1844, GBPP, 1845 (247), vol.4, p.11, [docs, vol.16, p.5401].

[216] Address from the Inhabitants of Kororarika [sic] to Governor FitzRoy, 9 January 1844, GBPP, 1845 (247), vol.4, p.28, [docs, vol.16, p.5386].

eight or ten', and generally no more than three or four vessels in port at any one time.[217]

In August 1844 the governor heard first hand from northern leaders that the cause of their discontent was 'their present extreme poverty and depression, because of the restrictions on the sale of their lands, and more especially the injury which they had sustained since the whaling ships and other traders had ceased to visit their ports'.[218] A few days later, FitzRoy announced that the Bay of Islands would henceforth become a free port. This was followed soon after by the more general abolition of customs levies. Yet although the governor had hoped that the removal of 'this root of evil' would return the north to a more settled state it could not, of course, ultimately prevent the ensuing conflict which followed – a fact which FitzRoy later partly attributed to subsequent publication of the resolutions of the House of Commons Committee on New Zealand late in 1844.[219] Others, including George Clarke Jnr., believed that the abolition of the customs came too late to reverse the situation in the north. Chiefs such as Hone Heke had lost all confidence in the government and were determined to end its authority in the north.[220]

However, as Dr Phillipson notes, the 'renegotiated alliance' subsequently agreed between FitzRoy and northern leaders at Waimate in September 1844 at least secured the Crown crucial allies when war did follow the sacking of Kororareka in March 1845.[221] FitzRoy informed the gathering at Waimate that, being desirous of promoting their welfare, along with that of the settlers resident among them, he had determined to remove the 'injurious' customs regulations which had 'done harm' to those in the north.[222] Beyond this, FitzRoy also agreed to return the troops who had arrived with

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[217] FitzRoy to Stanley, 29 September 1844, GBPP, 1845 (247), vol.4, p.11, [docs, vol.16, p.5401].

[218] Extracts from the *Southern Cross*, 7 September 1844, GBPP, 1845 (247), vol.4, p.150, [docs, vol.16, p.5394].

[219] FitzRoy, pp.32, 37.

[220] Clarke, p.69.

[221] Phillipson, pp.329-342.

[222] Extracts from the *Southern Cross*, 7 September 1844, GBPP, 1845 (247), vol.4, pp.150-154, [docs, vol.16, p.5394-5398].

him back to Auckland, leaving the management of affairs with the chiefs, who would henceforth be responsible for ensuring Heke's good conduct.[223] The governor's further promises to return the 'surplus lands' to Māori and generally to avoid further interference in their own affairs further assuaged many.[224] In the end, as James Belich has observed, the crucial distinction was that some northern Māori were reassured by FitzRoy's promises and believed their grievances were being or would be meaningfully addressed, whereas others such as Heke and Kawiti remained disbelieving.[225]

Hone Heke had throughout maintained that his quarrel was with the Crown, rather than the Europeans resident in the north. In this respect, as Phillipson notes, the destruction of Kororareka in March 1845 was a disaster for the chief.[226] Although Heke's objective had again been limited to the felling of the flagstaff for a fourth time, the accidental destruction of a magazine, causing the panic-stricken residents to flee the township, subsequently led to its plundering. Some of those who had participated in the raid on the flagstaff assisted the settlers to take their property to the boats waiting for them in the harbour, and children lost in the commotion were carried to their worried parents, while some Europeans and 'neutral' Māori took part in the plundering.[227] Heke, in particular, was said to have been extremely annoyed with the missionaries for joining the evacuation, declaring that 'they ought to have known him better'.[228] Despite its decline, Kororareka remained the main entrepot in the north. Its destruction, along with £40,000 worth of damage, constituted a severe blow for all northern Māori, causing some of those who thought the main threat to their economic well-being came from Heke to commit themselves to the governor for the first time.[229]

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[223] FitzRoy, pp.32-33.

[224] Phillipson, pp.339-342.

[225] Belich, *New Zealand Wars*, p.35.

[226] Phillipson, p.355.

[227] Wards, p.123; Thomson, vol.2, p.104; Belich, *New Zealand Wars*, p.33.

[228] Clarke, p.72.

[229] 'Petition of Settlers at Kororareka', AJHR, 1856, E-7, p.2, [docs, vol.12, p.3715]; Phillipson, p.355.

Yet as Belich has suggested, those northern Māori who nominally committed themselves to the Crown side were pursuing their own objectives rather than simply those of the British.[230] Their 'limited war' was in part motivated by the desire to restore prosperity to the north, through the return of the settlers and expanded trade opportunities, within a framework on ongoing control over their own internal affairs – just as FitzRoy had promised them at Waimate in September 1844. Giving effect to this arrangement would become a priority for many northern chiefs in the wake of the Crown's 'paper victory' at Ruapekapeka in January 1846.

### 3.6 Northland After 1846

It soon became apparent following the cessation of hostilities in the north in January 1846 that a return to prosperity would prove neither easy nor quick. Indeed, in the first year after this total exports from the port of Kororareka were nearly two-thirds lower than their pre-war levels (declining from £5678 in 1844 to £1981 in 1846).[231] By 1851 the figure had fallen to just £48.[232] Many of those who had fled to Auckland did not return to the north and by 1853 Kororareka was reduced to just 40 inhabitants.[233] In 1860 it was noted that the 'much more diminutive village' came to life only spasmodically, when American whaling ships called into port for provisions, which were supplied not from local produce but transmitted by coaster from Auckland.[234] Donald McLean, upon visiting the district in 1858, observed that this was 'a very precarious mode of subsisting' and recorded in his journal that 'silence prevails; and an apathy exists; which indicates that the place has been...retrogressing, instead of advancing'.[235] He commented that '[t]he poverty of the Bay of Islands is

[230] Belich, *New Zealand Wars*, pp.35-36.

[231] Exports by Destination and Imports by Origin at Main Ports, 1841-1852 (Table 44), *Statistics of New Zealand for the Crown Colony Period.*

[232] ibid.

[233] Thomson, vol.2, p.105.

[234] *New Zealander*, 12 March 1860, [docs, vol.21, p.6976].

[235] McLean, Journal (typescript), 18 December 1858, vol.4, MS-1287, ATL, [docs, vol.24, p.8368].

very obvious. The people are poor, ill-fed, idle, and not advanced in proportion to the advantages they have had.'[236] After the excitement caused by the war, the north had again returned to the state of 'prolonged stagnation' it had previously experienced.[237]

Although the reasons for this were complex, one factor was undoubtedly important. In the wake of Ruapekapeka, Governor Grey proudly proclaimed a crushing defeat over the anti-government forces, within the context of which his decision to abandon FitzRoy's previous determination to demand a cession of lands could only seem a magnanimous gesture rather than the truly pragmatic retreat which it was.[238] It was not in Grey's interests (or his nature) to publicly acknowledge this as such, but the new governor understood that the north had not been sufficiently well pacified to confiscate lands, let alone seize or arrest the leading anti-government figures as he would subsequently do in the case of Te Rauparaha and other Ngāti Toa leaders.

Although some observers chose to parrot Grey's line, declaring that Heke and Kawiti had 'throw[n] themselves on the mercies' of the governor,[239] others saw things somewhat differently. The missionary Robert Burrows wrote soon after Ruapekapeka that he feared Heke was 'not sufficiently humble',[240] whilst Felton Mathew considered '[t]he snake…scotched, not killed'.[241] Kawiti meanwhile boasted to Tirarau in February 1846 that:

> with his handful of men, he had withstood and beaten the English, with all the force they could collect from Port Jackson and other places, and that he had lost very few men. He declared that the Soldiers were unable to conquer him;

[236] McLean, Journal (typescript), 22 December 1858, vol.4, MS-1287, ATL, [docs, vol.24, p.8373].

[237] *New Zealander*, 12 March 1860, [docs, vol.21, p.6976].

[238] Grey to Stanley, 13 January 1846, 22 January 1846, GBPP, 1846 (448), vol.5, pp.8, 14-15, [docs, vol.16, pp.5509, 5515-5516].

[239] *New Zealander*, 24 January 1845, [docs, vol.20, p.6841].

[240] Burrows to D. Coates, 29 January 1846, Robert Burrows Letters, 1839-1877, CN/027, Micro-MS-Coll-4-49, ATL, [docs, vol.10, p.3383].

[241] J. Rutherford (ed.), *The Founding of New Zealand: The Journals of Felton Mathew, First Surveyor-General of New Zealand, and His Wife 1840-1847*, Dunedin: A.H. & A.W. Reed for Auckland University College, 1940, p.227.

> and that peace was made not by his wish or desire, but at the earnest entreaty of the Governor.[242]

The *New Zealander* reported that same month that although the anti-government forces were generally desirous for peace, 'they boast very much, and they say that the Governor and troops going away so soon was in plain English *bolting*'.[243]

In April 1846 the same newspaper reported that Heke was 'still restless and evinces an impatience of subordination to the Queen's Representative', still having more than 600 followers with him.[244] At the end of that year Sir Godfrey Thomas travelled to the Bay of Islands, where he met with Waka Nene. The pair laughed off the latest rumours of Heke's hostile intentions, with Nene declaring that Heke would be too afraid to launch an attack, realising that he (Nene) could command twice the number of fighting men.[245] Even so, Thomas could not fail to notice the 'anxious manner' in which Nene inquired into the truth of rumours that the naval sloop *Racehorse* had been sent to Wellington and his request for timber from a large hulk lying off the harbour in order to erect a stockade around his house. And when Thomas travelled around to Wahapu, where the 55th Regiment was stationed, he found its commander 'labouring under an extraordinary depression of spirits, occasioned by an idea of the great responsibility of his situation, and his incapacity from protecting, in case of an attack by the Natives, the European settlers'.[246] Many of the remaining residents were preparing to evacuate as soon as possible, and although this turned out to be a false alarm (Heke was simply on an expedition to remove the bones of some of his relatives), the whole incident spoke volumes as to what Europeans in the north really thought of their supposedly crushing victory in the recent war.

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[242] *New Zealander*, 28 February 1846, [docs, vol.20, p.6859].

[243] *New Zealander*, 14 February 1846, [docs, vol.20, p.6853].

[244] *New Zealander*, 4 April 1846, [docs, vol.20, pp.6868-6869].

[245] Sir Godfrey Thomas, A Trip to the Bay of Islands in December 1846 and January 1847, GNZMSS 134, vol.53, pp.62-63, ACL, [docs., vol.11, pp.3509-3510].

[246] Sir Godfrey Thomas, A Trip to the Bay of Islands in December 1846 and January 1847, GNZMSS 134, vol.53, pp.64-65, ACL, [docs., vol.11, pp.3511-3512].

The only condition of Grey's January 1846 proclamation declaring a free pardon for those who had fought against the government forces was that all horses stolen from Europeans should be returned forthwith to their proper owners.[247] Yet neither Heke nor Kawiti were inclined to take any notice of this. 'So much', one report concluded, 'for the "brilliant successes" at Rua-peka-peka'.[248]

In October 1846 Heke and Kawiti had met with Waka Nene to formally make peace. Heke, it was reported, was now ready to restore the horses 'purloined by the rebels at the commencement of hostilities'.[249] Yet remarkably, three years later, in 1849, the horses taken from Hingston around the time of the Matakana muru were still in the possession of Māori. Hingston had himself written to Grey at about the time Heke's supposed willingness to restore the horses had been reported, complaining that he had 'time and again' requested local officials to take steps for their return but to no avail.[250] Grey had instructed that 'efforts for their recovery' should be made 'as soon as practicable'.[251] Yet despite being provided with a list of names of the alleged perpetrators of the theft, no action was taken to recover the horses.[252] The Resident Magistrate at Russell cautioned that:

> they will never be given up by any civil process; and if they are to be recovered by coercive measures, it must be at the expense of the tranquillity which now prevails. – Heke is as much inclined as ever to create mischief and disturb the peace of this part of the Island, if he could only succeed in getting followers. – Without Heke's sanction, these Horses will not be given up by the Natives (who are all under his control) in whose possession they are.[253]

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[247] Proclamation, 23 January 1846, GBPP, 1846 (448), vol.5, p.16, [docs, vol.16, p.5517].

[248] *New Zealander*, 4 April 1846, [docs, vol.20, pp.6868-6869].

[249] *New Zealander*, 24 October 1846, [docs, vol.20, p.6871].

[250] N.G. Hingston to Grey, 6 October 1846, IA 1/1849/158, Arch-NZ, [docs, vol.1, pp.204-205].

[251] Grey, marginal note on Hingston to Grey (6 October 1846), n.d, IA 1/1849/158, Arch-NZ, [docs, vol.1, p.205].

[252] Hingston to Grey, 16 November 1846, IA 1/1849/158, Arch-NZ, [docs, vol.1, pp.202-203].

[253] J. Patience to Colonial Secretary, 24 April 1847, IA 1/1849/158, Arch-NZ, [docs, vol.1, pp.199-200].

Accompanying this communication was a defiant letter from one of the suspected offenders, declaring that he would never give up the horses without Heke's express sanction.[254]

This time Grey simply instructed that the correspondence was 'to be filed'.[255] The governor no doubt did not wish to dwell on the fact that British claims to victory in the Northern War had merely been a convenient fiction, and certainly did not wish to expose the fact by endeavouring to enforce British law or punitive proceedings against the offenders. In 1849 the unfortunate Hingston appealed once again to the Resident Magistrate for the return of his horses. This time, a different tack was taken, with Cyprian Bridge attempting to flatter Hone Heke into returning the horses with the offer of a salaried Crown position. 'I hope you, being a chief whom I have recommended should be appointed a Native Assessor will assist me in getting the horse restored to its proper owner', he wrote.[256]

These efforts to co-opt Heke as an instrument of indirect British rule in the north met with an emphatic response. Heke informed the Resident Magistrate:

> Friend The Major you are mistaken. I am no magistrate for Europeans. I am a Maori man for the Maori people. You have a law an erroneous law. I have a law likewise, it is a straight law. You were straight in writing the letter you have written to me here. I have nothing to do with that sort of business. I have seen your faults. You did not come to Paihia relative to the horse of Mr Hingstons. [H]is talk was false it was taken in the war. [I]t cannot be straight, the Governor has his thoughts. And I have my thoughts enough – my writing to you is ended. I have no wish for more. Should the lower order of Europeans misbehave in future, I will not look to the magistrates, it matters not whether

[254] Tau to More, n.d., IA 1/1849/158, Arch-NZ, [docs., vol.1, p.201].

[255] Andrew Sinclair, marginal note on Patience to Grey, 10 May 1847, IA 1/1849/158, Arch-NZ, [docs, vol.1, p.200].

[256] Bridge to Heke, 9 January 1849, IA 1/1849/158, Arch-NZ, [docs, vol.1, p.196].

> they are Chiefs or whether the Governor goes to war that will be good – enough.
>
> E hoa[,] e Te Meiha kua he koe, ehara ahau i te kai whakawa pakeha, he tangata Maori ahau no te tangata Maori – he ture ano tohu ture he – he ture ano tohu ture tika. Kua tika koe i tou pukapuka i tuhituhi mai nei ki au. Kahore aku tikanga ki te pena [?]. Kua kitea e au ou he. Kahore koe i tae mai ki Paihia. Ko to hoiho o te Rekatene e he ana taua korero. No to pu ano i te whawhai ka riro mai, e kore tika. Ko Kawana me tana wakaaro ko au me taku whakaaro, heioano kua mutu taku tuhituhi kia koe, kore aku pai, tutu no ake ano nga ware pakeha e takoto ake nei [?] me o ratou hei he e kore ahau e titiro ki te kai whakawa, e takoto ake nei, ahakoa Rangatira, ahakoa Kawana ko te whawhai ko te pai te na heoi ano. [257]

Hingston's horses had become something of an emblem of the Crown's failure to secure substantive sovereignty over the north in the wake of Ruapekapeka. Māori opposition was enough to make civil processes for securing their return all but useless, whilst a punitive military expedition risked a further outbreak of open conflict. Crown officials who would perfunctorily (or hopefully) write that Heke's influence was small and continuing to wane would at the same time warn that defiance of the chief could prove disastrous: theirs was a truly tenuous state of denial. Some settlers doubtless preferred to live in areas where the rule of (British) law was a reality rather than legal fiction.

Heke's insistence on applying customary Māori law was also demonstrated in other cases. In October 1848, for example, Bridge reported that multiple 'outrages' had recently been committed by Heke and his followers. At Whangaroa, one follower of Heke had committed a murder, supposedly on the orders of the chief, whilst another chief of the area, Taiwhanga, had been subjected to a taua muru in consequence, so it was said, of his son having cursed Heke. When requested to return the property, Heke had replied that Taiwhanga 'had better convert his Ware into a blockhouse' because

[257] Heke to Bridge, 16 January 1849, IA 1/1849/158, Arch-NZ, [docs, vol.1, pp.197-198].

'he might require it'.[258] Meanwhile, the missionary Richard Davis, who was based close to Heke at Kaikohe, was met with demands for compensation from the chief for burning a tapu spot in the area. Davis remonstrated that his shepherds had accidentally set fire to the area in question, which in any event was on land which he had paid the chief for many years previously. When Davis added that he was surprised by Heke's behaviour and that he ought to set a better example, 'Heki flew into a violent rage and told him he had cursed (or insulted) him, and demanded a further payment for that'. When Heke had received the utu demanded from Davis, the chief is said to have declared that he was sorry the missionary had given in so quietly as 'he would have been glad of this as a pretext for commencing another war'.[259]

Heke, Bridge added, 'openly declares it rests entirely with him whether there be peace or war – he has only to say the word & so it will be'. Henry Williams had also been warned to watch what he said about the chief, while Whangaroa and Mangonui Māori had been advised by him to send back their recently-arrived Resident Magistrate, W.B. White. This, however, they had refused to do, declaring that it was none of Heke's business.[260]

Clearly Heke's pretensions towards a paramount leadership position among Northland Māori did not sit comfortably with at least some other chiefs. Yet even those with no connections with Heke, or those who had opposed him during the war, continued to treat it as axiomatic that their own customs and laws should continue to prevail within their own communities.

In August 1847 the Auckland merchant John Logan Campbell wrote privately to Grey from Hokianga to report 'three murders actually committed & two others attempted one resulting ultimately in death', which he had become aware of during his time in the district. In each case, Campbell wrote, the perpetrators were 'fearlessly living at

[258] Bridge to Colonial Secretary, 15 October 1848, IA 1/1848/2600, Arch-NZ, [docs, vol.1, pp.278-280].

[259] Bridge to Colonial Secretary, 15 October 1848, IA 1/1848/2600, Arch-NZ, [docs, vol.1, pp.278-280].

[260] Bridge to Colonial Secretary, 15 October 1848, IA 1/1848/2600, Arch-NZ, [docs, vol.1, pp.278-280].

large & narrating their diabolical exploits to whomsoever will lend an ear'.[261] In one case, a Māori servant of Frederick Maning had been killed at the latter's residence at Onoke in a dispute over the daughter of the chief who had committed the act. She had been secretly married to the victim in order to retain his services for the chief. But when a disappointed suitor of the rangatira class subsequently discovered the truth of the matter he had taunted the murderer, declaring that he might have had a chief for a son-in-law but instead had a slave.[262] Another instance involved the fatal shooting of an elderly former slave by the young chief he had helped to rear. According to Campbell, the chief had sought utu for the infidelity of one of his wives but as the main offender was a chief who could not be killed with impunity, he had sought it elsewhere.[263] Yet another case involved allegations of pūremu, this time the wife being the direct victim.[264] Campbell either did not know or did not record the reasons for one of the attempted murders, but recorded that an old chief had:

> pursued a woman with the intention of killing [her] until she fortunately escaped into the kitchen of a Mr. Munro...the old chief being a tatooed [sic] man & very superstitious was afraid to follow her thinking that if he went into a "Kauta" he would be sure to die – he raged outside calling upon the woman to come out that he might kill her & the woman would have gone out but was prevented by some of Mr. Munro's natives in the kitchen at the time who detained her until the old wretchs [sic] rage had expended itself.[265]

A few months later Campbell wrote again to report two more murders – both of the victims had been accused of practising 'witchcraft' – and to inquire what steps the government had taken, or was planning to take, in the matter. He was aware, Campbell added, that the presumption was 'that Govt. would find themselves unable in the remote district in which these murders are taking place to enforce the law', but

[261] Campbell to Grey, 16 August 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.250-254].

[262] Campbell to Grey, 16 August 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.255-258].

[263] Campbell to Grey, 16 August 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.259-260].

[264] Campbell to Grey, 16 August 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, p.261].

[265] Campbell to Grey, 16 August 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.261-262]. Emphasis in original.

nevertheless felt it necessary for 'such moral means as may be within its reach' to be adopted to deter further such killings.[266]

Just over a fortnight later instructions were issued to Captain C.L. Nugent of the 58th Regiment and the Native Secretary, Lieutenant Symonds, to proceed to the Bay of Islands 'for the purpose of remonstrating on behalf of the Government with the Chiefs in that District on the subject of the numerous murders of natives which have been recently committed there'.[267] Detailed instructions issued to the pair noted that northern Māori had been 'for a considerable period of time relapsing into their ancient barbarous customs, and that they now in accordance with these customs frequently upon the death of any person of consequence, kill innocent individuals', alleging that they are guilty of practising 'witchcraft, or of some other crime'.[268] Tamati Waka Nene had been spoken to on the subject, Nugent and Symonds were informed, and admitted to having heard of some of the murders, 'but states that in all the instances he had heard of…the individuals put to death had been guilty either of the crime of adultery under aggravated circumstances, or of being believed to have caused deaths by witchcraft'.[269] Nene, it was added, believed that British laws relating to adultery were 'neither applicable nor available' to Māori living in remote parts of the country and warned that any effort to apprehend any man of consequence who had killed his wife under such circumstances would in all likelihood be strongly resisted by their communities. Other chiefs consulted had also warned that efforts to apprehend those who, 'acting in accordance with their customs, had put to death a witch or sorcerer', would likewise be strongly resisted.[270]

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[266] Campbell to Colonial Secretary, 10 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.245-247]. Emphasis in original.

[267] Grey, minute, n.d [November 1847], IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.243-244].

[268] Andrew Sinclair, Colonial Secretary, to Captain Nugent, 25 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.221-222].

[269] Andrew Sinclair, Colonial Secretary, to Captain Nugent, 25 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.223-224].

[270] Andrew Sinclair, Colonial Secretary, to Captain Nugent, 25 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.224-226].

Nugent and Symonds were accordingly to visit all of the principal chiefs in the northern districts, informing them that the government was aware of the 'numerous murders' which had been committed there and warning them that any person found guilty of such crimes would be 'liable to the most severe punishment whenever he may be apprehended' regardless of how much time had elapsed. At the same time they were to be informed that the object of the government was simply 'to prevent the recurrence of such dreadful crimes for the future, [rather] than to seek to punish those crimes which have been already committed'.[271] The pair were to 'beg' the chiefs to 'lend the Government the whole of their influence and aid' to put a stop to such crimes.

Beyond the question of the murders, Nugent and Symonds were also requested to report fully upon all circumstances connected with the state of the northern Māori population, 'their wants, their wishes, the present state of their feelings towards Europeans and towards the Government', any grievances they might be harbouring under and the best means of removing these. Two grievances in particular were likely to be raised, the pair were told, the first concerning rumours that the Crown intended seizing their lands and the second being the large tracts of land claimed by members of the Church Missionary Society. With respect to the former, they were to reassure Māori that their rights would be respected. On the latter subject, the governor was doing all in his power to protect the just claims of Māori against the 'illegal' claims of the CMS, they were further directed to state.[272]

The instructions issued to Nugent and Symonds were indeed remarkable considered in the context of what had been a consistent strand in Colonial Office policy on New Zealand from 1839 onwards. Lord Normanby had informed Hobson in that year that until Māori could be 'brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals'. Normanby had added the important rider, however, that 'the savage practices

[271] Andrew Sinclair, Colonial Secretary, to Captain Nugent, 25 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.229-230].

[272] Andrew Sinclair, Colonial Secretary, to Captain Nugent, 25 November 1847, IA 1/1848/325, Arch-NZ, [docs, vol.1, pp.233-240].

of human sacrifice, and of cannibalism, must be promptly and decisively interdicted'; '[s]uch atrocities', the Colonial Secretary noted, were 'not to be tolerated' under any circumstances within any parts of the British Empire.[273] The killings at Hokianga were certainly not consistent with 'universal' (that is, British) maxims of humanity, though it should, of course, be noted that Māori who had witnessed public floggings at Port Jackson or had attended executions staged under British law equally considered these cruel and barbaric practices, at odds with Māori notions of humanity and morality.[274]

Yet when even a supposedly 'ultra-loyalist' chief such as Waka Nene considered the killings justified under customary Māori law and warned against foolhardy efforts to apprehend the offenders, Grey's options were extremely limited. Sending a few officials north to remonstrate with the chiefs and argue the merits of abandoning such practices was about the strongest measure he could adopt which did not run the risk of provoking a further armed conflict with northern Māori – one in which, as Nene's response suggested, the Crown was unlikely to find many allies willing to fight what would effectively be an effort to supplant British law in the place of the customary Māori one which prevailed there.

Nugent's report of their tour of the northern districts (which took in many settlements from Kaitaia south to Northern Kaipara) noted that 'the prejudices of the whole Native population on the subject of witchcraft are so strong that no arguments which we could adduce would avail to eradicate them from their minds'. It was evident, therefore, he added that:

> in the present state of our relations with the Natives…any attempt to punish them for killing those whom they may deem guilty of sorcery, while it would cause both considerable resistance and bloodshed, would still fail to persuade

[273] Normanby to Hobson, 14 August 1839, GBPP, 1840 (238), vol.3, pp.37-42, [docs, vol.24, pp.8055-8060].

[274] Salmond, pp.352-354; Judith Binney, 'Tuki's Universe', NZJH, vol.38, no.2, 2004, pp.215-232; Robert McNab, *Historical Records of New Zealand*, vol.1, Wellington: Government Printer, 1908, pp.264-265; William Yate, *An Account of New Zealand and of the Formation and Progress of the Church Missionary Society's Mission in the Northern Island*, 2nd edition, London: R.B. Seely and W. Burnside, 1835, pp.104-105.

> them of the fallacy of their ideas on the subject, [but] on the contrary might tend even more to strengthen their belief in the existence of such a crime.[275]

Nugent and Symonds had met with one of the individuals noted in Campbell's letter as being guilty of one such killing, but Nugent noted that 'all our arguments seemed to have little weight with one who no doubt considered that he was doing an act of justice'. Two more recent murders had been committed at Hokianga, in which a committee, 'a kind of tribunal where the assembled chiefs sit in judgment on culprits', had pronounced the victims guilty of having caused the deaths of several chiefs through 'witchcraft' and had promptly condemned them to the same fate.[276] Nugent concluded that:

> Until the Government is strong enough in the country to seize and execute the offenders, it is to be feared that some such dreadful crimes will occasionally occur; nor will there be any means of punishing the delinquents, if chiefs, without the danger of involving their relatives and tribes.[277]

Although Nugent somewhat optimistically believed that their visit, and warnings issued that the government was aware of the killings, would have a beneficial effect in reducing their frequency in future, his report left the government in little doubt as to the prevalence of customary Māori law in the north.

With respect to their wider brief, Nugent reported widespread Māori concerns that their lands were to be seized, following reports of Earl Grey's 'waste lands' instructions being circulated in the north. Nugent noted that 'many of them would die sooner that resign' their rights to their lands, but added generally that:

> A large portion however of their land they would sell with avidity, with good faith, and for almost nominal prices; as, far from being hostile to Europeans, there seems to be a general wish for the establishment of townships in their

[275] C.L. Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, pp.1704-1705].

[276] Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, pp.1701-1702].

[277] Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, p.1699].

> districts, as they are well aware of the advantages which arise from the neighbourhood of a town, from the example they have of the tribe of Nga te Whatua near Auckland.[278]

Northern Māori, he added, 'appear to feel the loss of those Europeans who have gone, as they gave a good deal of employment, purchased their produce, and supplied them with tobacco, blankets and clothing at more reasonable rates than they are now able to obtain them'. The establishment of townships was seen by northern Māori as the key to reversing their economic fortunes. A more prosperous future could only be realised through new and larger markets being found, of which locally-based townships were seen as the most important. This would become an almost incessant demand of northern Māori over the following decade.

### 3.6 Early Proposals for a Township

In September 1847 Grey travelled to the Bay of Islands, where he met with Nene, Heke and others. Grey now proposed to give northern Māori what they most sought – a township – but not without considerable strings attached. It would be a township of military pensioners intended to provide the Crown with an additional force at their disposal, though still with the obvious economic advantages that local chiefs expected would coming from having a large settlement in their midst. According to the evidence of Kawiti, Nene and the governor had gone to Kerikeri 'to look for a site for a town':

> They both ascended Pakepoke (a hill); the Governor asked Waka, Whose is that land? It belongs to Williams. Whose is that land? It belongs to Williams. Whose is that hill? It belongs to Williams.[279]

[278] Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, pp.1710-1711].

[279] Appendix F, in Henry Williams to Earl Grey, 1 November 1848, GBPP, 1850 (1120), vol.6, p.85, [docs, vol.24, p.8148].

Kerikeri, the mission station bereft of Māori to proselytise, appeared ideally suited for township purposes for a number of reasons. It did not in fact belong to Williams but was part of the 'Children's Land' held in trust for the families of CMS missionaries. Richard Davis wrote that:

> The Governor is now wishing to form a settlement or township in the vicinity of Keri Keri, and applied to Mr. Kemp and myself, who hold some of the land in trust for seven of the mission families in that neighbourhood. We gave our consent as trustees, if the parties concerned gave their consent also. The natives, of course, formed one of the parties.[280]

A few days later, however, Davis received a letter from Hone Heke objecting to allowing soldiers to settle at Kerikeri. Davis met with Heke shortly after this and told him he had agreed to the governor's proposals, provided local Māori also agreed. The missionary also proffered his view:

> that I thought the town would open a sale for the produce of the country. 'That it may do,' he replied, 'but what will it open besides? It will let in all kinds of wickedness. We shall have no road to the sea. Thieving will be introduced, our wives and daughters abused, and you will have no followers. The Governor wishes to possess himself of the country. This township is only prepatory thereto, and I shall oppose it.[281]

Yet despite Heke's suspicions (which were probably well-founded given the nature of the proposed settlement), his primary concern appears to have been the location selected for this. A township at Kerikeri, Heke worried, would leave him with 'no road to the sea'. According to the correspondent for the *Southern Cross*, Heke had declared that if the governor should 'introduce Troops (Fencibles) on his side of the

[280] R. Davis to J.N. Coleman, 19 October 1847, in J.N. Coleman, *A Memoir of the Rev. Richard Davis*, London: James Nisbet and Co., 1865, p.334.

[281] ibid., pp.335-336.

Bay, he should consider war not far distant'.[282] The primary purpose of Grey's visit, the newspaper opined (apart from stirring up agitation with talk of returning the missionary lands to Māori), appeared to be 'to look for a convenient spot for Heki to slaughter the poor "Defencelessibles"'.[283]

On 1 October 1847 the Surveyor General, C.D. Ligar, wrote to James Kemp that he had been instructed by the governor 'to examine the district of the Kirikiri [sic], in order to ascertain its fitness as a location for the New Zealand Fencibles, in connection with a settlement of a general character, and more particularly to ascertain if a sufficient quantity of land available for the purpose could be obtained'.[284] Kemp replied five days later, indicating that he was willing to provide land for these purposes on such terms as were just and reasonable, and was also happy to accommodate the Crown's request with respect to the lands at Kerikeri held in trust for the children of members of the CMS mission, but did not 'feel at liberty to act decisively at present, until we can have had an opportunity of consulting with the parties concerned'.[285] Yet just three days later Kemp again wrote that:

> Since my letter of the 5th instant on the subject of the land held in trust for seven of the Mission Families, both the Revd R. Davis and myself have learned with much pain, that there is a serious objection raised on the part of the Natives against the formation of the contemplated Township; we therefore lose no time in giving you the earliest information and beg leave to say that we feel it necessary to decline making any arrangements respecting the land, until His Excellency the Governor can come to an understanding with the Natives on the subject.[286]

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[282] *Southern Cross*, 25 September 1847, [docs, vol.24, pp.8193-8194].

[283] *Southern Cross*, 25 September 1847, [docs, vol.24, pp.8193-8194].

[284] C.D. Ligar to James Kemp, 1 October 1847, NZMS 139, Auckland City Library (ACL), [docs, vol.24, pp.8475-8476].

[285] Kemp to Ligar, 5 October 1847, NZMS 139, ACL, [docs, vol.24, pp.8481-8482].

[286] Kemp to Ligar, 8 October 1847, NZMS 139, ACL, [docs, vol.24, p.8486].

Grey, it would seem, did not feel inclined to take the matter further in the light of Heke's objections. Members of the Fencibles were instead located in South Auckland and plans for a township at Kerikeri lapsed for the time being. The main stumbling block had always been the location of the proposed township, rather than the concept of one being established.

That Heke was not opposed in principle to further settlement was demonstrated during Nugent and Symond's tour through the north. Although Heke was absent from his pā when the pair visited, one of his principal followers informed them that:

> he had heard that the pensioners were to be settled at Kerikeri: this Heki objected to as he said it might lead to disputes about his women, and that some of his people might steal and be put in prison which would cause a disturbance; but [he] approved of a settlement established at Russell or Kororareka on the Southern side of the Bay.[287]

Nugent considered that the real reason for his objection was 'very probably…that it might be a benefit to the Natives who were in opposition to him…during the late insurrection'.

Heke's opposition to significant European settlement on the western side of the Bay was made even clearer in 1849, when John Irving attempted to settle on land at Waitangi purchased from Gilbert Mair. James Busby, who had originally 'purchased' the land from local Māori, attended a meeting in the company of Irving in order to discuss their objections to this development. Here he was informed that 'Heke had resisted the Governor's wish to have a town at Keri Keri and at Waitangi, and I must send this man away as Heke would allow no town on this side of the Water'.[288] The local Resident Magistrate explained that Heke's opposition to Irving was based on his 'dislike to their being a Township on this side of the Bay, fearing that if one European

[287] Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, pp.1687-1688].

[288] Busby to Colonial Secretary, 29 December 1848, G 30/14, pp.898-902, Arch-NZ, cited in Phillipson, p.163.

settled down there, more would follow'.[289] The chief finally intervened personally to grant Irving a conditional right to occupy the lands in question, but at the same time made it clear he would be the last allowed to settle on that side.[290] Irving was informed that although he would be allowed to remain there, Heke 'would not consent to any more white men residing on that side of the water, nor would he sanction the establishment of any town there'.[291] Heke appears to have believed that he had an understanding with Grey on this point, perhaps based on the latter's apparent abandonment of plans for the Kerikeri area, writing:

> Because the sea is the boundary of the Town of the Europeans that was arranged at the ending of the war between the Governor and myself. Should this not be attended to my good intentions to either will be ended.[292]

It was clear to all concerned then that, so long as Heke retained his influence, any new settlement on the western side of the Bay would be attended with considerable risks.

Yet the missionary James Kemp believed Heke was so anxious for a European settlement that he was contemplating asking the governor directly for one. In April 1849 the movements of Heke and his followers had again caused widespread alarm amongst settlers in the north but had again simply involved the disinterment of the bodies of some of their relatives. Kemp wrote that he was:

> much pleased with the conduct of the natives during this movement of Heke's & trust they will settle down quietly, many have expressed a wish for Europeans to come and settle amongst them, there is some talk of Heke & the Napuhe's [sic] Chiefs sending a deputation of Chiefs to the Governor for a Town to be placed amongst them.[293]

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[289] Bridge to Colonial Secretary, 15 January 1849, IA 1/1849/353, Arch-NZ, [docs, vol.1, p.306].

[290] Heke to Irving, 11 January 1849, IA 1/1849/353, Arch-NZ, [docs, vol.1, pp.312-313].

[291] *New Zealander*, 24 January 1849, [docs, vol.20, p.6896].

[292] Heke to Irving, 11 January 1849, IA 1/1849/353, Arch-NZ, [docs, vol.1, pp.312-313].

[293] James Kemp, Journal, 16 April 1849, MS-1105, ATL.

Whether Heke had softened his opposition to further settlement on the western side of the Bay is not clear, though Kemp's comments suggest that perhaps he had. In any event the chief's death in August 1850 provided an opportunity to reopen this question, and in February 1851 more than 90 chiefs wrote to Grey to inform him that:

> The agreement of the meeting held at Te Ti (Mangonui, near Te Puna, Tareha's River, Bay of Islands) for a town to be laid out by the Governor. This request originated with King William Tareha, Josiah Waikato, Te Pakira, William Hau, Te Rata Hongi, William Parangi, Edward Pika, by whom this meeting was called to consider your word given to Tareha in his lifetime. He is dead, but you are still alive. This therefore is the fulfilment of your word, that a Town should be laid out, so that the wishes of this meeting may be fully carried out by you, and that the Queen and ourselves may in truth be joined as one people. ...
>
> This is the book of the meeting of all the sub-tribes, this is their agreement. Oh friend the Governor, salutation to you. This is our word to you, that you should give a town to this meeting for a pa for us. This is our union (whakakotahitanga) with the Queen, that we may be gathered under her wings, and that she may be a parent to us for ever and ever.
>
> Ko te whakaaetanga o te whakaminga [sic] ki te Ti mo te Taone kia tukua mai e te Kawana, ko te putake o tenei karanga mo te taone na Kingi Wiremu Tareha, na Hohaia Waikato, na te Pakira, na Wiremu Hau, na te Rata Hongi, na Wiremu Parangi, na Eruera Pika, na ratou i karanga tenei huihuinga mo te kupu ki a Tareha tana oranga. Kua mate ia, ka koe i ora. Na koia tenei ko te whakaturanga o to kupu kia tukua mai e koe tetahi Taone, kia tino whakaritea e koe tenei whakaminenga kia pono i te whakakotahitanga ki a te Kuini. ...
>
> Ko te pukapuka o te whakaminenga o ia hapu, o ia hapu, ko te whakaaetanga koia tenei. E mara e te Kawana tena ra ko koe, ko ta matou kupu tenei ki a koe, homai e koe he Taone ki tenei whakaminenga hei pa mo matou. Ko to

> matou whakakotahitanga tenei ki a te kuini, kia runa ki roto ki nga pakau o te Kuini hei matua mo matou ake ake ake.[294]

It has been suggested that this letter constituted a specific request for the establishment of a township at Mangonui Te Ti,[295] though that does not seem readily apparent from the document itself, which refers to this location only in the context of the venue at which the hui to discuss the issue was convened. What is clear from the letter, though, is that the concept of a new township had assumed a symbolic significance for northern Māori above and beyond merely the economic benefits it was expected to confer on them. Such a settlement would stand as a mark of their renewed alliance with the Crown and would be a place at which both peoples could come together under the protective shelter of the Queen. The new township northern Māori pined their hopes on would, in a very real sense, be a living embodiment of their restored and reinvigorated union with the Crown. The 'living treaty', as Belich has termed it, would be given full expression in the new township.[296]

Heke's widow, the formidable Hariata, had her own views on the subject, however, reminding Grey just a few days after the letter from the chiefs of Heke's 'saying to you':

> not to allow a Town to be laid out here; and I have kept in remembrance that word, that a town should not stand here; there should be one town, at Kororareka, and then all will be well.

[294] Kingi Wiremu Tareha and others to Grey, 5 February 1851, GNZMA 378, ACL, in Jane McRae (comp.), 'Northland Research Programme: Catalogue of Maori-language Documents', (Volume Two: Auckland City Library), May 2005, pp.85-89.

[295] Rose Daamen, Paul Hamer and Barry Rigby, 'Auckland', (Waitangi Tribunal Rangahaua Whanui Series, Working Paper: First Release), July 1996, p.135.

[296] Belich, *Making Peoples*, p.202.

> Ko tona kupu tenei ki a koe kia kaua e tu te taone ki konei; a kua pupuri ahau i taua kupu kia kaua te taone e tu ki konei, kia kotahi ano te taone, ko Kororareka, ka pai.[297]

Again, the objection was not to the township but (it would seem) to its proposed location on the western side of the Bay, contrary to the wishes of the late Heke.

Yet despite ongoing opposition from Heke's widow, other northern leaders continued to see just such a western location as the ideal one for a new township. On 1 May 1851 the newly-installed Lieutenant-Governor of New Ulster, Robert Wynyard, wrote to Grey, forwarding a request from Waka Nene for a loan to purchase a vessel and at the same time reminding him of Nene's longstanding desire for the establishment of a township at Kerikeri.[298] Grey replied that:

> With regard to Waka Nene's application for the establishment of a settlement at the Keri Keri, I am unable to give any definite reply, as I have no knowledge of the state of the land claims in that District. It appears that Waka Nene states that the Missionaries have given him all the land, from their station at the head of the Keri Keri river as far as the Waimate; it would be very desirable to ascertain is this really the case, as also what Missionaries have given him this land, and on what grounds their title to it rests; as if so extensive a district could be obtained possession of, it might be found very desirable to establish a settlement at the Keri Keri.[299]

[297] Hariata to Grey, 8 February 1851, GNZMA 379, in McRae (comp), 'Catalogue of Maori-language Documents', vol.2, pp.90-93.

[298] R.H. Wynard to Grey, 1 May 1851, G 8/1, Arch-NZ. [Unable to be copied].

[299] Grey to Wynard, 8 June 1851, IA 1/1851/1640, Arch-NZ, [docs, vol.2, pp.383-385]. 'Waka Nene' is listed among the signatories to the February 1851 letter from the 90 chiefs, though whether this was Tamati Waka Nene or not is unclear.

Asked to report on the true state of this question,[300] the Russell Resident Magistrate, James Clendon, reported in August 1851 that 'Waka Nene is under a mistake in supposing that the Missionaries have given him the Land'. According to Clendon:

> Waka Nene is exceedingly anxious that a settlement should be formed at Keri Keri, and has repeatedly applied to Mr Kemp and Mr Clarke to give up their lands for that purpose. They told him, the land had been offered to the Government, and it was for the Governor to do as he pleased. It was tendered to Governor Hobson in 1840, and in about September 1847 to the Surveyor General.[301]

The missionary James Kemp had informed Clendon that he had 'no doubt' that lands held by the CMS 'would be given up to the Government upon application', while five of the seven mission families for whom 5500 acres were held in trust had given him their written consent to dispose of their interests in the lands, and Kemp's own sons were prepared to sell the 1000 acres held by them on the same terms. The distance from the head of the Kerikeri River to the CMS lands at Waimate was about eight miles, Clendon added, of which the lands held variously by the CMS or families associated with it constituted about half:

> the remaining four miles is in the possession of the Natives who I have no doubt would dispose of it, at a moderate rate, as the land is of no value to them, in its present state, and they are quite alive to the great advantage, they would derive from a settlement in that quarter.[302]

Yet despite the apparent willingness of all concerned to provide lands for the purpose of a township, nothing further came of these latest proposals. When it came down to it, it would seem, government willingness to assist in the economic revival of the

[300] Colonial Secretary to Resident Magistrate, Russell, 26 June 1851, BAVX 4817/1c, Arch-NZ (Akl), [docs, vol.23, pp.7985-7986].

[301] Clendon to Colonial Secretary, 20 August 1851, IA 1/1851/1640, Arch-NZ, [docs, vol.2, pp.378-379].

[302] Clendon to Colonial Secretary, 20 August 1851, IA 1/1851/1640, Arch-NZ, [docs, vol.2, pp.380-381].

north remained limited so long as the broader political issues that had led to conflict in the 1840s remained largely unresolved.

Not that there was any shortage of continuing requests for the establishment of townships from northern Māori. In 1855, for example, the government interpreter, C.O. Davis, reported following a tour of the Hokianga district that he had heard '[s]everal touching appeals on this subject, and it was asserted that in consequence of the fewness of European settlers the people were obliged to travel many scores of miles in guest of employment and clothing'.[303] As Davis was informed:

> During former years even until this time, we have been exclaiming, 'Alas! there is no town! alas! there is no town!' We are impoverished and neglected as you now see us. We know that love is in your heart towards us, therefore we wish you to carry with you our thoughts, and lay them before the Governor, in order that something may be devised to remedy the present state of things.
>
> I ara tau tuku iho ki enei wahi, e karanga tonu ana matou, 'Aue! kahore he taone! Aue! kahore he taone!' E rawakore nei matou, e kitea nei e koe. E matau ana matou he aroha kei roto kei tou ngakau, no konei matou i mea ai kia kawea atu o matou whakaaro ki a te Kawana, me kore ra nei e rapua tetahi tikanga hei whakaora i a matou.[304]

Asked to commit their thoughts to paper for transmission to the governor, a letter was prepared which was agreed to by 50 chiefs in which it was pointed out that the people of Hokianga had 'done no wrong that they should be thus deserted by the Europeans' ('Kahore ianei he kino o nga tangata o Hokianga i whakarerea noatia e te Pakeha'). They requested that the governor be quick to send them some Europeans next summer.[305]

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[303] *Te Karere Maori*, 1 November 1855, [docs, vol.18, p.6059].

[304] *Te Karere Maori*, 1 November 1855, [docs, vol.18, p.6059].

[305] Rangatira Moetara to Governor, 16 May 1855, reproduced in *Te Karere Maori*, 1 November 1855, [docs, vol.18, p.6060].

The following year the Hokianga chiefs again wrote to the governor to express their 'desire to have white people to live amongst us' ('He hiahia uo [sic – 'no'] matou ki tetahi Pakeha hei hoa noho mo matou'.[306] Even the government's own Māori-language organ, *Te Karere Maori*, observed that the Hokianga chiefs had complained 'with some apparent justice that they had not received as much encouragement and notice from the government as the Maories inhabiting the East coast'.[307]

Yet beyond the abandoned proposals for a township at Kerikeri, there had been scarcely much more interest shown by the government in encouraging further settlement on the east coast. One 1855 petition from an agent representing a group of Canadians anxious to settle in the north even alleged that they had been informed by a Crown official that 'it was not the policy of the General Government to purchase lands of the Natives to any extent in the North, or to encourage its settlement'.[308] *Te Karere Maori*, meanwhile, continued to report upon the desire of northern Māori for further settlement, whilst saying nothing of government intentions with respect to fulfilling this. In 1857, for example, the newspaper noted that:

> The Ngapuhi, who were the first among the tribes of New Zealand to invite the English to settle among them, are now more anxious than ever that their part of the country should be settled by a large European population. This tribe feels confident that no harm will result to them from the introduction of more Europeans; on the contrary, they consider that their poverty arises from having no population to consume their surplus produce, – no means of getting ploughs, carts, horses, harrows, and other implements to improve their waste lands. Therefore, they say:– "Let us have more white people; we have been so long accustomed to them, that we cannot live without them; let our waste lands be purchased by the Government that we may see the country around us

[306] Makaore Taonui and others to Governor, 24 March 1856, reproduced in *Te Karere Maori*, 31 May 1856, [docs, vo.18, p.6069]. For a contemporary translation of this letter, which traversed a wide range of important issues, see Phillipson, pp.257-260.

[307] *Te Karere Maori*, 31 May 1856, [docs, vol.18, p.6064].

[308] Petition of Samuel John Stratford, n.d. [1855], 'Correspondence relative to proposed immigration into this colony from Canada and Nova Scotia', AJHR, 1856, C-8, p.2, [docs, vol.12, p.3723].

> improved by having good agricultural farms, with roads, bridges, and other facilities, to enable us to travel with safety and comfort from place to place.["][309]

Perhaps the key lay in the statement that Ngāpuhi could see no harm to themselves from encouraging further settlement. They remained numerically dominant and did not see a township as jeopardising their ability to continue to control their own affairs. Yet the Crown had turned its back on the north in the wake of the Northern War, not because, having gained a decisive victory it now wished to slowly strangle the lifeblood out of the local economy, but precisely because it had failed to secure meaningful recognition of its authority. In 1858 a new generation of northern Māori leadership once again renewed their old alliance with the Crown, providing the sort of voluntary recognition of its authority in matters pertaining to the affairs of both peoples that they hoped would be sufficient to see the government at last re-engage with the north. It was to be a bold and striking effort to establish a partnership for the benefit of all in the north.

[309] *Te Karere Maori*, 31 January 1857, [docs, vol.18, p.6073].

# 4. The Alliance is Renewed: Northland Māori and the Crown After 1858

## 4.1 The Flagstaff on Maiki Hill

Conventional accounts of the Northern War praise Governor Grey for his wisdom in not insisting upon the re-erection of the flagstaff on Maiki Hill, thereby not putting Heke to open shame.[310] Grey's decision was no doubt a wise one, but it had not been motivated solely by the desire to avoid humiliating Heke. Instead, the desire to avoid further Crown humiliation was a strong motivating factor. If the symbol of British sovereignty in the north was to be toppled again, Grey would be obliged to take action against the offenders, exposing the weakness of the Crown's position in the north – and the lie of its victory in the Northern War – for all to see. This was something Grey could live without, even if it rankled with those few Europeans still resident in the north. As Henry Williams observed four months after Ruapekapeka, 'The flag-staff in the Bay is still prostrate, and the natives here rule. These are humiliating facts to the proud Englishman, many of whom thought they could govern by a mere name.'[311]

In fact, a new flag-staff had been erected on Maiki Hill as early as 7 February 1846. Two days later the local commanding officer reported that it was 'still standing', suggesting even he was a little surprised by this.[312] Waka Nene, who had chosen to re-erect the flagstaff and fly a red ensign from it on his own initiative, explained that his actions were not intended as a provocative gesture, but as symbolising his 'loyalty'.[313] Although the remaining troops in the Bay were quickly removed from Waitangi to Kororareka to defend the new flagstaff,[314] this was no more than an interim measure.

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[310] Clarke, p.92.

[311] Williams to E.G. Marsh, 28 May 1846, cited in Belich, p.70.

[312] Officer Commanding Troops at the Bay of Islands to Officer Commanding the Troops, Auckland, 9 February 1846, IA 1/1846/403, Arch-NZ, [docs, vol.1, p.165].

[313] Wards, p.207.

[314] Wynard to Colonial Secretary, 12 February 1858, IA 1/1846/403, Arch-NZ, [docs, vol.1, pp.163-164].

Nene was quietly prevailed upon soon after to remove the flagstaff until the government could erect and defend an official one.[315] It never did.

Phillipson notes the view of the Protector of Aborigines, Edward Shortland, that the flagstaff was viewed as a kind of pou rāhui, symbolising not just British claims to sovereignty, but British claims to the land itself. In this context, he argues, the expected response was to take it down if claims to ownership were to be challenged. According to Phillipson this helps to explain both Heke's view that it was not his chopping down of the flagstaff that had caused the war but the Crown's persistence in re-erecting it, and his later repeated offers to re-erect the flagstaff himself, or to do so jointly with the governor.[316] Any unilateral re-erection of the flagstaff by the Crown, viewed from this perspective, could hardly fail to bring about further trouble and turmoil in the north, whereas a joint initiative to restore it, or even a purely Māori one, would be interpreted quite differently as upholding and acknowledging the mana of northern Māori.

It was the old chief Kawiti who took the lead in 1847 in proposing that the flagstaff again be put up on Maiki Hill. Three spars had been cut down for the purpose and Heke had been informed of the proposals, reportedly replying that Kawiti 'may do so if he thinks proper' (though it seems extremely unlikely that Kawiti would have actually sought Heke's permission, as opposed to his support).[317] By early November 1847 the spars had been hauled on to the beach at Russell, and local Māori were busily squaring them and reducing them to their proper size. Cyprian Bridge, the Russell Resident Magistrate, informed Kawiti, Tamati Waka Nene, Pomare and other chiefs that Governor Grey 'had no objection to their re-erecting the Flag-Staff' and that he would meet their request for ropes with which to haul the spars up the steep hill by sending the necessary supplies on the government brig by 'the first

[315] Wards, p.207.

[316] Phillipson, p.315.

[317] Patience to Colonial Secretary, 25 September 1847, IA 1/1848/243, Arch-NZ, [docs, vol.1, pp.210-211].

opportunity'.[318] The brig must have had an exceptionally busy next three months, because at the end of January 1848 Bridge wrote again, this time to complain that:

> the Chiefs Waka, Kawiti & Pomare have expressed much disappointment that the Flag Staff which they have provided should remain so long on the beach instead of being put up on the Hill at Russell for want of Ropes, blocks &c. which His Excellency (they say) promised them he would bring up with him when he came to the Bay...and have requested me to write for authority to have it erected without any further delay.[319]

In Bridge's own view, so long as the remaining British troops at the Bay of Islands were stationed at Wahapu that would be the preferable spot for a flagstaff. He was informed in response that:

> when the question relative to the re-erection of the flagstaff at Russell was last brought under the consideration of His Excellency before leaving Auckland, he directed that no steps should then be taken in the matter, and as His Excellency appears not to have left any directions on the subject when last at the Bay of Islands, I do not feel myself justified in giving any instructions at present; I will however bring the question under the consideration of His Excellency on his return to Auckland.[320]

Grey, though, wanted none of this, declaring that he saw 'no good reason for issuing orders on the subject'.[321] Confronted with specific requests from the chiefs on his previous visits to the Bay, Grey had little option but to offer the requested assistance – to do otherwise would be to look weak and insecure. Yet at the same time he realised that, regardless of who put the flagstaff up, its defence would become a matter for the Crown. This was where Grey perhaps began to truly feel somewhat weak and

[318] Bridge to Colonial Secretary, 2 November 1847, IA 1/1848/243, Arch-NZ, [docs, vol.1, p.208].

[319] Bridge to Colonial Secretary, 29 January 1848, IA 1/1848/243, Arch-NZ, [docs, vol.1, pp.206-207].

[320] Sinclair (Colonial Secretary), 8 February 1848, BAVX 4817/1a, Arch-NZ (Akl), [docs, vol.23, p.8011].

[321] Sinclair (Colonial Secretary), minute, 15 February 1848, IA 1/1848/243, Arch-NZ, [docs, vol.1, p.207].

insecure. Even the insurance offered by Kawiti's personal involvement in the plan to re-erect the flagstaff (which would almost certainly oblige him to defend it in future), or Heke's apparent lack of concern over the whole affair, was not enough to persuade the governor that the risks involved were not unacceptably high. Grey's exceptionally cautious approach ensured Maiki Hill would remain bereft of a flagstaff for the next decade.

In the mid-1850s the Crown began contemplating removing the remaining troops from the Bay of Islands. This had been prompted not by any belief that they were now unnecessary, but rather from the realisation that 122 soldiers could, of themselves, offer no effective deterrent to further unrest, let alone stopping it without reinforcement from Auckland. That being the case, so it was argued, it was better simply to remove the troops to Auckland, from where they could be called upon in the event of any trouble.[322]

Yet even though the decision had been purely a tactical one, the removal of the last remaining troops from the Bay of Islands – completed early in 1858 but debated openly for several years before this – appears to have been welcomed as a positive development by northern chiefs, who now assumed an added responsibility for keeping the peace in the area. James Clendon reported that Tamati Waka Nene, for one, was 'delighted that so much confidence will be placed in him'. When Clendon informed Nene that the governor now looked upon the Assessors in the north as his soldiers, 'the old fellow was almost mad with joy'.[323]

According to Henry Williams, northern chiefs determined once again to erect the flagstaff at Maiki, this time in response to a deputation which had come to elicit support for the recently-formed Kingitanga. The deputation was informed in response that northern Māori would acknowledge no other sovereign than Queen Victoria, and determined forthwith to demonstrate their support by forming a council for the

[322] R.H. Wynard to Governor Gore Browne, 10 September 1855, 12 September 1855, GBPP, 1860 (2719), vol.10, pp.153-156, [docs, vol.17, pp.5815-5818]; IA 1/1856/3267, Arch-NZ, [docs, vol.3, pp.875-892].

[323] James Clendon to McLean, 8 August 1857, McLean Papers, folder 220, ATL, [docs, vol.9, pp.3029-3031]; McLean Papers, typescript, vol.14, MS-1319, ATL, [docs, vol.9, p.2761].

restoration of the flagstaff on Maiki.[324] Mohi Tawhai, the Hokianga chief, informed Governor Browne in July 1857 that he, along with Tamati Waka Nene, Tamati Pukututu, Wiremu Hau and Hira Te Pure had met at Kororareka 'on account of our having heard that the natives of the south had proclaimed a king':

> Hence we say the only King is the Queen of England for these Islands, for Natives and Europeans also. The world is a garden and the Queen is the only fence which encloses it, and it is for the Queen to see all good or bad weeds therein.
>
> Now, o Governor, the Ngapuhi Tribes intend to hold a great meeting at Kororareka in December, when the flagstaff at Maiki is to be again erected; which is the King the Ngapuhi acknowledge.[325]

The final decision to re-erect the flagstaff on Maiki Hill appears to have been made sometime between October and November 1857, and received widespread endorsement from northern Māori at this time. According to Maihi Paraone Kawiti, son of the late chief Kawiti, some 1379 individuals and 32 hapū had consented to the proposal to re-erect the flagstaff on Maiki Hill, subscribing over £86 to a fund to pay the costs involved in doing so.[326] Kawiti himself later recalled that he had overseen the entire operation, from the selection and cutting down of the tree, to its preparation and transportation to Russell and the payment of £100 to carpenters to finish off the work.[327]

According to the Harbour Master at Russell, Edward Bolger, some 200-300 Māori had been present to assist with getting the spar out of the bush, Bolger adding that 'the only jealousy that appears about the "Flagg [sic] Staff" now is, that all hands want the

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[324] Henry Williams, Annual Report (1857), CN/06, Micro-MS-Coll-4-44, ATL, [docs, vol.10, pp.3381-3382].

[325] Tawhai to the Governor, 31 July 1857, BAVX 4817/5a, Arch-NZ (Akl), [docs, vol.23, pp.7890-7891].

[326] M.P. Kawiti, Letter to Editor (C.O. Davis), 18 January 1858, *Te Whetu o Te Tau*, 1 July 1858, [docs, vol.18, p.6118]. Translation by Dr. Jane McRae, May 2006.

[327] Kawiti to Native Minister, 23 May 1887, MA 13/80, Arch-NZ, [docs, vol.6, pp.2023-2024].

honour of pulling it up'. Kawiti had applied to him for rope, blocks and other equipment of the kind Grey had refused to send a decade earlier and Bolger had sensibly provided them with this.[328] McLean successfully argued that food supplies to the value of £20 should also be sent to those hauling the spar out, noting that the feeling in favour of re-erecting the flagstaff was 'very general' and it was unlikely to meet with opposition from any northern chiefs.[329]

Yet beyond a few bags of flour and sugar for those involved, the government was decidedly twitchy about being seen to be providing support for the re-erection of the flagstaff. This was seen most clearly at Mangonui, where the decision had also been made to erect a flagstaff as a symbol of the renewed relationship between local Māori and the Crown. This decision had been adopted by the chiefs at a widely-attended October 1857 hui held at Mangonui at which the move was warmly endorsed by Whangaroa representatives. Pororua, for example, told the hui:

> This is my proposal; let the flagstaff be again set up on Maiki hill; let us also have a town here and one at Whangaroa. My word is, a town, a town!
>
> Ko taku kupu tenei, Ko Maiki kia maranga, a, ko tetahi Taone kia noho i konei, me tetahi ano hoki ki a matou, ki Whangaroa. Ka mutu taku i konei, he Taone, he Taone.[330]

W.B. White reported that the tribes sought a flagstaff at Mangonui 'that they might show themselves to the world as the upholders of the law, and its officers'. He had, White added, 'for a long time known their feelings on this subject', but had 'had no opportunity of hearing it expressed in public, by the principal Ngapuhi and Rarawa

[328] Bolger to Auckland Superintendent, 19 November 1857, IA 1/1857/1699, Arch-NZ, [docs, vol.3, pp.912-913].

[329] McLean, marginal notes on Superintendent to Colonial Secretary, 25 November 1857, IA 1/1857/1699, Arch-NZ, [docs, vol.3, pp.905-906]; McLean to Resident Magistrate, Bay of Islands, 16 December 1857, MA 4/2, Arch-NZ, [docs, vol.4, p.1310].

[330] *Te Karere Maori*, 31 October 1857, [docs, vol.18, pp.6075-6077].

chiefs, until this day'.[331] But when White subsequently wrote to request an actual flag to hoist once the flagstaff was ready at Mangonui, the Native Minister, C.W. Richmond, objected that it would be:

> inexpedient to make a present [of a] flag to the Monganui Natives. A similar [?] present could be then expected at the Bay which would have the effect of constituting the new Flagstaff at Kororareka Crown property. This I think would be highly inadvisable.[332]

The old concern – which had left Grey too afraid to even send Kawiti a few bits of rope a decade earlier – had been revived, namely defending the flagstaff once it had the Union Jack hoisted upon it.

T.H. Smith, the Assistant Native Secretary, pointed out, however, that it had always been Crown policy to provide flags when requested unless special grounds for refusal existed, adding:

> The case of the Bay of Islands is scarcely parallel. The erection of the flagstaff there is intended as an acknowledgement of a past error & an attempt to repair it & should therefore be distinctly shown to be spontaneous and should be done without assistance or cooperation on the part of the Govt. A refusal in the present instance would I am inclined to think be injudicious & tend to check the sentiments of loyalty & good feeling towards the Govt. which has recently been so warmly expressed by the Natives at Mangonui.[333]

Mangonui Māori accordingly got their requested flag, though somewhat ludicrously, it was to be given 'as a present from the magistrate, rather than from the Queen, who

[331] White to Colonial Treasurer, 13 October 1857, IA 1/1857/1699, Arch-NZ, [docs, vol.3, pp.914-916].

[332] C.W. Richmond, marginal note on White to Colonial Treasurer, 6 January 1858, IA 1/1858/140, Arch-NZ, [docs, vol.3, p.922].

[333] T.H. Smith, marginal note on White to Colonial Treasurer, 25 January 1858, IA 1/1858/140, Arch-NZ, [docs, vol.3, p.922].

should not be supposed to have a Flag flying where H.M. has no force at hand to protect it'.[334] So much for the supposedly 'pacified' north.

On 2 February 1858 the new flagstaff was erected at Mangonui. Ururoa of Whangaroa told the crowd of more than 600 Māori (and most of the European settlers resident in the area) gathered for the occasion that they had now become united with the government:

> Hence arose the thought that a Flag-staff should be erected here. It is symbolical of the love of the Maories to the Queen and the Government. This Flagstaff shall be named Victoria and Albert, and shall be considered a token of our love and friendship for the Europeans.
>
> ...no reira ano hoki tenei kara i meinga ai kia whakaarahia e nga Maori, he tikanga ano hoki tana; i mea ai, ko tena heo whakakotahitanga i runga i te tino aroha ki a Te Kuini, me Te Kawanatanga ano hoki. Na, ka mea ano ia, kia karangatia te ingoa o te kara ko Te Kuini Wikitoria raua ko Arapata; hei tohu ano hoki mo to ratou aroha, whakahoatanga hoki ki te Pakeha.[335]

Other speakers echoed these sentiments, supporting both the name for the new flagstaff (Victoria and Albert) and the symbolism behind it. Te Morenga, for example, reminded the assembly that the flagstaff 'was erected for no ordinary purpose' but stood in confirmation of their determination to live under one ture, in peace and friendship with the governor.

Similar expressions were heard at Russell five days earlier, on 29 January 1858, when the flagstaff there was re-erected. More than 70 feet long and 2 feet in diameter, the spar used for the new flagstaff required more than 500 men to carry it up Maiki Hill.[336] According to the brief account of the ceremony published in *Te Karere Maori*:

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[334] Marginal note, 28 January 1858, IA 1/1858/140, Arch-NZ, [docs, vol.3, p.923]; T.H. Smith to White, 11 February 1858, MA 4/2, Arch-NZ, [docs, vol.4, p.1315].

[335] *Te Karere Maori*, 27 February 1858, [docs, vol.18, pp.6106-6108].

[336] *Te Karere Maori*, 15 January 1858, [docs, vol.18, p.6086].

> On Friday, the 29th of January, Maihi Paraone Kawiti, desired all the Chiefs to assemble at the foot of the flag staff. Maihi then took a bottle of wine, and stood at the foot of the flag staff, and said, What name shall I give to this flag-staff? The Chiefs all started up and said, Let it be called, Our union with the Laws of the Queen. [Ko te whakakotahitanga ki nga Ture O Kuini].
>
> The Chiefs then saluted the flag thus:– We salute you, O Queen! We salute you, O Governor.[337]

The only apparently sour note to proceedings was that Governor Thomas Gore Browne was not present to hear these expressions of goodwill or to participate in the ceremony itself, even though he had been at the Bay just a few days earlier meeting with northern chiefs. Gore Browne informed McLean privately that he had heard that 'Kawiti's people were much disgusted at my not landing a second time to share in the hoisting [of] the Flag there'.[338] His decision not to attend, Browne wrote defensively, 'had nothing to do with fatigue' but was the result of 'careful consideration & consultation' with T.H. Smith. In a separate letter Browne was rather more candid as to the real reasons for his decision, writing that he was:

> very sorry not to take part in the erection of the flag at Kororarika but Smith and Clendon were very decided in advising me to the contrary and I felt that it would not be wise to commit myself to a party who might change their mind and throw down the flag as quickly as they raised it.[339]

The bumbling Browne was almost entirely dependent on McLean for what little knowledge he possessed of things Māori. Had McLean been present with him he may well have advised that a flagstaff erected with the widespread support of northern Māori would not lightly be attacked given that this would likely be perceived as a

[337] *Te Karere Maori*, 15 May 1858, [docs, vol.18, p.6115].

[338] Browne to McLean, n.d. [c.8 February 1858], McLean Papers, folder 183, [docs, vol.9, p.3002].

[339] Browne to McLean, n.d. [c.30 January 1858], McLean Papers, folder 184, [docs, vol.9, pp.3014-3015].

slight on the mana of those who had participated in the event and a challenge to the renewed alliance of friendship and support with the Crown which the flagstaff symbolised.[340] Kawiti, in fact, sought the formal appointment of kaitiaki charged especially with taking charge of the flagstaff. Smith recommended that 'a desirable arrangement would appear to be to commit the Flagstaff to the joint custody of two or more chiefs chosen from those who supported and those who resisted the Government in the war in the North'.[341] It would appear that he may have had in mind Kawiti himself along with Tamati Waka Nene, though whether any formal appointments were made as such is not clear.

In the 1840s northern Māori and the Crown had gone to war over (according to Heke's account) the latter's insistence on re-erecting the flagstaff unilaterally.[342] In 1858 the Crown remained desperate to avoid being seen to have any involvement in its re-erection that might oblige it to defend Maiki Hill. Perhaps four failures were seen as enough, but it was a measure of how nervously the Crown looked upon the north, even more than a decade later, that officials continued to lack confidence in their ability to successfully defend the flagstaff there and remained suspicious of the overt statements of loyalty and friendship expressed by northern Māori. In fact, when Governor Browne visited the north he feigned perfect indifference to the flagstaff, telling the chiefs:

> If the hands which cut it down wish to replace it, it is well. As an acknowledgement to the world of a past error, it is well. Whether it be replaced or not, the sovereignty of the Queen over this island remains the same: the Queen is Queen of New Zealand whether all her subjects know her as such or not. Those who are ignorant will grow wiser in time. The flag is but a symbol. The Ngapuhi once mistook it for the symbol of a power to be used

[340] When William Baker travelled to Mangakahia in mid-January 1858 he reported that very few Māori remained at the settlement: most had gone to the Bay to 'assist in the erection of the flagstaff'. Baker to McLean, 21 January 1858, McLean Papers, typescript, vol.15, MS-1320, ATL, [docs, vol.9, p.2779].

[341] Smith to Resident Magistrate, Bay of Islands, 23 March 1858, MA 4/2, Arch-NZ, [docs, vol.4, p.1314].

[342] Heke to Queen Victoria, 10 July 1849, GBPP, 1850 (1280), vol.6, pp.17-18, [docs, vol.17, pp.5722-5723].

> to injure them and cut it down. Strife ensued and blood was spilt. The Queen was grieved that men's lives should be sacrificed through a misunderstanding. She directed that forbearance should be shewn and that the Ngapuhi should be left to find out their error. The flagstaff was not again set up. Those who cut it down have now seen their error. The Ngapuhi now know that the flag was a symbol of a power which has ever been used for their protection and benefit.[343]

Browne's statement that the flag was 'but a symbol' was rather cute coming from someone who, critics at this time alleged, was inclined to read rather too much into symbolism and labels (specifically, in his insistence that there could be no such title as 'King' held by a Māori chief). Symbols mattered (probably to the pompous and aristocratic Browne more than most) and it was stretching the old maxim about making a virtue out of necessity just a little too far to assert that the Crown had not re-erected the flagstaff so that Ngāpuhi could be left to find out the error of their ways alone: the Crown had not put up the flagstaff again simply because it was too scared to do so. Now that northern Māori had done so themselves, Browne and other officials pretended not to care, hoping that this would excuse them from having to defend the flagstaff in the event of further trouble in the north. The psychic scars left by Hone Heke continued to haunt officials in the north long after the chief's death. But at least the Queen was game enough to express her 'satisfaction' at the restoration of the flagstaff.[344] That was more than most local officials could bring themselves to do.[345]

### 4.2 Gore Browne's 1858 Visit

Gore Browne arrived at the Bay of Islands on board the *Iris* on 7 January 1858 and was formally welcomed at a levee attended by the European residents of Kororareka and a number of leading chiefs the following day. The settlers presented Browne with

[343] *Te Karere Maori*, February 1858, [docs, vol.18, p.6091].

[344] Stanley to Gore Browne, 27 May 1858, reproduced in *Te Karere Maori*, 31 August 1858, [docs, vol.18, pp.6121-6122].

[345] Their paranoia later subsided, and in 1863 the government agreed to pay the costs involved in undertaking repairs to the flagstaff. W. Gisborne to Resident Magistrate, Russell, 1 May 1863, BAVX 4817/24b, Arch-NZ (Akl), [docs, vol.23, p.7675].

a numerously-signed memorial calling the governor's attention to the need to establish a new township on the western side of the Bay.[346] The chiefs, preferring to make a verbal request, did not sign the petition but simply harangued the governor at every available opportunity for the next week on the same theme. It seems to have worked: by the time Browne had left, northern Māori had extracted the promise of a township at Kerikeri from him.

Following the levee, Browne met with the chiefs separately in front of Waka Nene's house at Kororareka. Here the chiefs expressed their pleasure at his visit and the opportunity it afforded them of communicating personally with the representative of the Queen. According to the report of this hui published in *Te Karere Maori*, the chiefs were also grateful for the chance to make a public avowal in his presence of their 'resolution to acknowledge Her Sovereignty and to obey Her laws in future', though the Māori version of this simply records their agreement that the Queen would be a 'rangatira' for them and that the 'ture' would be heard by them in future ('i to ratou whakaaetanga ki a te Kuini kei rangatira mo ratou, ki ona Ture hoki ka whakarangona e ratou akenei akenei').[347] This composite summary of the speeches of the chiefs (no verbatim record being published) also noted that:

> Regret was expressed for the folly which had deprived the Ngapuhi of the advantage of having a flourishing town in their midst; and His Excellency was urged to promise that a new township should be formed in some eligible situation. Allusion was made to the foolish project of setting up a Maori King, – which none of the Ngapuhi Chiefs were disposed to favour but which, they stated, had caused them to show all the tribes that the only sovereign the Ngapuhi are willing to acknowledge is the Queen of England.
>
> Puta ano hoki te kupu whakahe me te ketekete mo te mahi kuare i kore ai he taone pakeha hei whakangahau i roto i a ratou; tohe ana hoki kia whakaae te Kawana kia whakaturia ano tetahi taone ki tetahi wahi pai. Puta ana etahi kupu mo te mahi poauau mo te whakatu i te Kingi maori, kahore hoki nga rangatira

[346] *Southern Cross*, 2 March 1858, [docs, vol.19, pp.6335-6337].

[347] *Te Karere Maori*, February 1858, [docs, vol.18, p.6089].

> o Ngapuhi i pai, engari, i mea ratou, ko tetahi take tera i whakaaro ai ratou kia whakaturia tenei kara, kia kite ai nga tangata katoa heoiano to Ngapuhi e pai ai, e rongo ai, ko te Kuini o Ingarani anake.

Governor Browne informed the gathering that he had heard Ngāpuhi were now loyal subjects of the Queen and firm friends of the Pākehā and what he had seen and heard so far convinced him of the truth of this. He would always stand ready to assist the chiefs 'in their efforts to promote the welfare of their people'.[348]

Maihi Paraone Kawiti, who had been busy hauling the spar out of the bush, did not make it to Kororareka in time for the meeting, but at a personal interview with the governor on board the *Iris* the following morning stated that he wished, on behalf of the party who had once opposed the government, to convey 'their desire to make amends for past errors, by replacing the flag-staff on the spot where it had stood when cut down by Heke':

> and also to offer a piece of land at Te Kawakawa, as a piece-offering, to be given and received in token of complete reconciliation and perfect amity between themselves and the Government. [hei tohu mo te tino houhanga o te rongo ki te Kawanatanga, me te rangimarietanga]. With respect to the township, he did not presume to dictate to His Excellency, who would be the best judge as to the most eligible position; – but he hoped that the offer of the Kawakawa would not be rejected, though found unsuitable for a town site, as he was more anxious about receiving the assurance of reconciliation with the Government than about a township.[349]

Browne assured Kawiti that 'the past was forgotten; and that the Ngapuhi now possessed the confidence of the Government and were looked upon as friends'. At the conclusion of their talk, Kawiti presented the governor with a Māori spear, 'in token of friendship and alliance'. Kawiti then speedily departed for Waitangi, where the governor was due to arrive for his next meeting with local Māori soon after.

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[348] *Te Karere Maori*, February 1858, [docs, vol.18, p.6090].

[349] *Te Karere Maori*, February 1858, [docs, vol.18, p.6092].

More than 600 Māori had gathered on the lawn in front of Busby's house on 9 January 1858.[350] Local chief Te Kemara, in welcoming the governor, 'urged upon His Excellency his claim to have a town at Waitangi as being the spot where British authority was first recognised', Mitai Pene Taui followed suit, declaring his hope for a township on the inland side of the Bay and noting the inconvenience and expense he and his people were put to in consequence of having to cross the water whenever they wished to communicate with the authorities or had business to transact at Kororareka.[351] Another chief declared his opinion that the township should be halfway between Kawakawa and Kerikeri, while Manu Kawau declared that he 'wished the meeting to confine itself to one topic, an expression of loyalty to the Queen, and the re-erection of the flagstaff as a token of alliance with the Government' ('Kua kotahi te ngakau kia te Kuini, koia tenei ko te rakau e takoto i Kororareka kua hono te ngakau o te Maori ki to te Kuini'). Yet other speeches made it clear that, for most northern chiefs, the re-erection of the flagstaff and the establishment of a township were seen as clearly linked. The re-erection of the flagstaff provided a basis of mutual reconciliation and forgiveness, and a token of their commitment to a peaceful and prosperous future together, which demonstrated their readiness to receive a township. As Manihera informed the governor, '[t]he flagstaff matter is settled, the town must follow'.[352] Mangonui had expressed similar sentiments in declaring that it was 'useless to think of restoring the old, there are two things which should be new, the flagstaff and the town, let both be new'.

Governor Browne told the assembled chiefs that 'one principal object of his visit to the North, was the selection of a proper site for a township':

> that he hoped to look at every place which might be thought eligible, and that with the assistance of Colonel Mould, who understood these matters and had accompanied him for the express purpose, he hoped he should be able to fix upon some suitable position where a settlement might be formed and a town

[350] *New Zealander*, 27 January 1858, [docs, vol.21, p.6912].

[351] *Te Karere Maori*, February 1858, [docs, vol.18, pp.6093-6094].

[352] *Te Karere Maori*, February 1858, [docs, vol.18, pp.6093-6094].

> laid out which should afford the opportunities of shewing to all the world the reality of the union of the two races which had been spoken of, and where the Maori and the Pakeha should cultivate their fields and build their houses side by side.[353]

According to a separate report of this hui published in the *New Zealander* Browne was unequivocal in his promise: '[a] township would be laid out wherever the most eligible site could be found'.[354]

It was a similar story at Waimate on 11 January 1858, where an impressive cavalcade of more than 150 horsemen, many bearing flags, were waiting to escort the governor on to the ground. Here a crowd of more than 400 were gathered to again debate the all-important location of the township Browne had now clearly promised them. The governor was informed that those assembled were 'desirous to receive a distinct promise from you; even now, that we shall have a Township on this the inland side'.[355] Te Hira Mura explained that the township should be on that side of the Bay, otherwise if it was on the other side, at Kororareka, 'John Fox the waterman will get all our money'. Waikato then put it to the assembly 'whether they were not in favour of Te Kiri Kiri [sic] as to the best position for a town and whether they were not willing to leave it to His Excellency to decide where it should be, to both of which questions an unanimous "yes" was delivered in a most emphatic manner'.[356] Browne again informed the crowd that it gave him great pleasure to tell them that the selection of a suitable site for a township had been one of the primary objects of his visit and he hoped that the site eventually selected would 'meet the wishes of all, and that a settlement may be established where the Maori and the Pakeha may sit down side by side , – and form one united community'.[357] Browne was then presented with 280 baskets of potatoes, five bullocks, four pigs, and five bags of biscuit – all of which he

[353] *Te Karere Maori*, February 1858, [docs, vol.18, p.6095].

[354] *New Zealander*, 27 January 1858, [docs, vol.21, p.6912].

[355] *Te Karere Maori*, February 1858, [docs, vol.18, p.6102].

[356] *Te Karere Maori*, February 1858, [docs, vol.18, p.6097].

[357] *Te Karere Maori*, February 1858, [docs, vol.18, p.6103].

presented to those who had attended the hui – along with various pounamu and other taonga.[358]

The following day the governor headed west for the Hokianga, stopping to visit the scene of the disastrous British defeat at Ohaeawai along the way, and meeting with some of Heke's own tribe at Kaikohe (who declared themselves greatly pleased to have had the pleasure of meeting a representative of the Queen). On 14 January 1858 Browne meet with the Hokianga tribes at Mangungu, where some 1200 people in all had assembled. Here the wily Tamati Waka Nene declared:

> Let us have Government expenditure here at Hokianga. Does not this fine river offer the inducements which the Pakeha seeks? It is the woman's work to weave garments. The Queen will nourish and the Governor support us. I have felt little interest in the talk about town sites and offers of land in other places. Here is the place to please me: we have a strong claim for we have bled in the cause of the Government. Other tribes have made propositions which I have not seconded. If you make one, I shall join you, for we have given our lives in the Pakeha's quarrels.
>
> I pau nga moni o Kawana i te ara, ona momona me kawe mai ki konei, e pakeha nei hoki, ko te nui tenei ko Hokianga e pari nei. Na te wahine te whatu, ko Kuinihoki hei whangai i a tatou; ko nga taumanu ko Kawana; kahore he pai o era korero, kei konei ka reka aku taringa: na nga tau iwi te karanga, kaore au i pai, ko tenei, na koutou te kupu, pai tonu aku taringa, no te mea ko tatou te utu mo nga he o te Pakeha.[359]

Again Browne was offered a huge quantity of food in presents and again returned them to the assembly. Yet although he privately informed McLean that he was extremely impressed by the speeches he had heard at Hokianga,[360] there was no

[358] *New Zealander*, 27 January 1858, [docs, vol.21, p.6912].

[359] *Te Karere Maori*, February 1858, [docs, vol.18, p.6100].

[360] Browne to McLean , n.d. [c.30 January 1858], McLean Papers, folder 184, [docs, vol.9, pp.3012-3013].

mention this time of a township in his response to these. There had, however, long been talk of establishing an inland settlement at Okaihau, and it may have been this which Nene had in mind in making his request to the governor.[361]

On the following day, Browne returned to the Bay of Islands, inspecting the Kerikeri area with a large party of officials for its suitability for a township, just as Grey had done 11 years earlier. Three years later, when northern Māori were still waiting for their promised township, the re-called Governor Grey would be reminded of Browne's undertakings on his 1858 tour through the north. In the interim, there would be plenty of light, but not much heat, in the efforts to turn this into a reality.

### 4.3 The Bay of Islands Settlement Act 1858

In March 1857, following a recent visit to the north, Native Secretary Donald McLean wrote a lengthy memorandum to Governor Gore Browne in which he urged the adoption of comprehensive measures to encourage the systematic colonisation of Northland.[362] Noting the progress made by the Nova Scotian settlers at Waipu, McLean pointed out that 'in the short space of twelve or fifteen months' they had 'converted the primitive wastes and forests into comfortable homes and farmsteads' and '[w]ithout any other aid than that of the axe and the hoe' had 'cleared and brought under cultivation much more than sufficient land to raise crops for their own subsistence'. There was every reason to expect, McLean noted, that 'by a continuance of their present industry and perseverance, they will contribute greatly to the material advancement of the province' and that '[t]housands of their countrymen would follow' them to New Zealand if only sufficient inducements were held out to them to do so. These inducements did not need to be extravagant, the Native Secretary added, but would simply require grants of land in locations suited to their requirements in remission of passage money along with credit for five or seven years for any further land they might wish to acquire under a pre-emptive right of purchase from the Crown. By these means the government could secure 'a steady flow of immigration to

[361] See section 5.6.

[362] McLean to Gore Browne, 20 March 1857, *Epitome*, A.1, pp.56-58.

the province of well-trained, hardy, and experienced bush-men and sailors' who would contribute materially towards the wealth, stability and progress of the colony.

McLean noted that the north was especially well suited to benefit from this potential influx of settlers:

> A glance at the map of the northern peninsula of New Zealand will show your Excellency the peculiar advantages which it offers for English colonization. In addition to the main harbours of the eastern coast – Auckland, Whangarei, the Bay of Islands, and Whangaroa (likely to be so important in the case of the establishment of the Panama line of steamers) – there are numerous well-sheltered coves and smaller anchorages; while the Kaipara and Hokianga on the western side, if more dangerous from the bars across their mouths and the stormy character of the coast upon which they are open, yet lead up into navigable streams which must tend to form a hardy and skilful race of seamen, invaluable to our insular position in the Southern Hemisphere.[363]

The Native Secretary therefore urged that:

> Means should now be adopted to resuscitate and promote upon a permanent basis the colonization of this portion of the Northern Island, so materially valuable, and historically so interesting as the seat of the earliest European settlement of New Zealand. To effect this it will be necessary to adopt liberal and comprehensive measures contemporaneously with the extinction of the Native title to the extensive districts of waste land that as yet remain unpurchased in this peninsula.

McLean recommended as the first step towards renewed colonisation of the north the survey of all scrip lands in the district (lands awarded to private parties but subsequently exchanged for government scrip entitling the bearer to claim their land entitlement elsewhere). The next step, he added, was the acquisition of 'larger tracts of land by purchase from the Natives', out of which blocks areas varying in extent

[363] McLean to Gore Browne, 20 March 1857, *Epitome*, A.1, p.57.

from 100 to 2,000 acres of cultivable and forest lands would be reconveyed under Crown grants to the principal chiefs, 'in order to secure to them a continued revenue proportionable to their rank'. This would, McLean believed, require some modification of existing Crown purchase policy:

> In order to do away with present or future dissatisfaction on the part of the Native sellers at the price they receive for their land as compared with the value it acquires when in the hands of the Government, unable, as yet, to comprehend the reasons that influence comparative value, it would be most desirable to expend a certain definite proportion (and that no inconsiderable one) of the moneys realized by the waste-land sales on roads and other improvements exclusively within those districts from which they have accrued, and from time to time to publish the balance-sheets of such expenditure in the *Maori Messenger*.[364]

It would also be necessary, under this plan, to 'ascertain the names of the principal chiefs whose co-operation would be essential for carrying out the views of Government, and who should, in return for their exertions, when efficiently rendered, to preserve the peace of their respective districts, be rewarded with marks of approbation and fixed annuities for their services'. Such chiefs should also, McLean recommended, be invited to assist in framing by-laws on matters of local concern, such as cattle trespass and other disputes, it being 'quite evident that the English law cannot be strictly carried out without the agency of the Natives'. McLean added that he was:

> quite aware that time, patience and perseverance, mutual forbearance, and reciprocity of good offices, are required to reconcile the Natives to our forms of government, but I am nevertheless fully confident that if they are once made to feel that the aim and object of the Government is to promote impartially the permanent advancement of both races of Her Majesty's subjects, irrespective of any temporary expedient for gaining some particular object, they will soon adapt themselves with zeal and loyalty to such changes

[364] McLean to Gore Browne, 20 March 1857, *Epitome*, A.1, p.57.

> as their natural acuteness of observation may prove to them as in reality conducive to such a consummation.

In McLean's conception the renewed colonisation of the north would thus require more than simply acquiring lands from Māori and planting settlers on these: it would also involve the extension of substantive British sovereignty by means of indirect rule through favoured chiefs and, by implication, the assimilation of northern Māori into colonial society through measures such as providing reserves by means of Crown grants awarded to individual chiefs.

McLean envisaged that his plan would lay a firm foundation upon which 'a more extended fabric of settlement and civilization throughout the Island might be gradually erected'.[365] Certainly it could not be criticised for lacking in ambition. Gore Browne, whose policies with respect to Māori were almost entirely derived from McLean,[366] predictably approved of his latest plan, writing that:

> I concur in all that the Native Secretary says. I am satisfied that the time has arrived when some permanent arrangement for the better government of the Native districts must be made; and I have long been of opinion that a portion of the money obtained by the sale of land over which the Native title has been extinguished ought to be expended in the locality from whence it is derived.[367]

The Auckland Superintendent, John Williamson, also assured McLean of his 'hearty co-operation' in implementing any plan for the 'speedy colonisation of the northern portion of this Province'.[368] His primary contribution to implementation of such a plan was the Auckland Waste Land Act, passed into law by the Auckland Provincial Council in March 1858. Under this provincial legislation, immigrants who had paid

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[365] McLean to Gore Browne, 20 March 1857, *Epitome*, A.1,p.58.

[366] Keith Sinclair, *The Origins of the Maori Wars*, 2nd ed., [Auckland]: Auckland University Press/Oxford University Press, 1961, pp.89-90.

[367] Minute by Governor Gore Browne, 27 April 1857, *Epitome*, A.1, p.58.

[368] Williamson to McLean, 17 December 1857, McLean Papers, folder 642, ATL, [docs, vol.10, pp.3326-3327].

for their own passage to the colony would be entitled to a free grant of 40 acres of land for every person over the age of 18, and 20 acres for those aged between five and 18.[369] This was exactly the kind of 'inducement' McLean was referring to as being required to attract fresh immigrants to the colony. But it did place the onus on the Crown to ensure sufficient lands were available to allocate to those attracted by the scheme, whilst raising one fresh complication of its own. If the province was intending to simply give away lands to incoming settlers, how would McLean's proposal to spend a percentage of the income generated from land sales on local projects of benefit to Māori be realised? There was no obvious solution to this, other than for the Crown or Auckland Province to make up the shortfall created by the giveaway of lands. This doubtless did not appeal and the proposal to (effectively) revive Russell's land fund appears to have lapsed as a general policy proposal in consequence.

The notion of reinvesting profits gained locally back into projects of local benefit was, however, subsequently reflected in the Bay of Islands Settlement Act of 1858. The preamble to this Act declared that:

> the formation of a Special Settlement on the Western side of the Bay of Islands for Colonization by Her Majesty's subjects without distinction of race would tend to advance the prosperity and welfare of the inhabitants generally and especially to promote the civilisation of the Aborigines in the Northern Districts of the Colony and it is therefore expedient that the Governor should be empowered to take the necessary steps for the formation of such a Settlement.[370]

The lengthy debate over the preferred site of any settlement was thus deemed at an end. The western side of the Bay now had its own legislation empowering the Crown

[369] Auckland Waste Lands Act 1858, *The Acts of the Superintendent and Provincial Council of the Province of Auckland*, Session VIII, no.2, [docs, vol.14, pp.4527-4548].

[370] Bay of Islands Settlement Act 1858, 'Further Correspondence between the Superintendent and the Agent-General Respecting Immigration', A-3, Appendix VI, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, pp.29-32.

to take steps to give effect to Browne's promise of a township there. The governor was to be empowered under this new legislation to set apart by proclamation in the *Government Gazette* any eligible site for a settlement and the boundaries of this, provided that the lands were on the western side of the Bay of Islands and did not encompass more than 250,000 acres of land inclusive of any property belonging to private individuals that might be included within the area duly proclaimed. The governor was also given sweeping powers to declare the whole of such lands to be Crown land free from all claims, with compensation payable to those whose lands were to be taken by these means. Town, suburban and rural allotments would then be let, sold or occupied on terms to be prescribed by the governor, with the proceeds from such sales to be directed firstly at defraying the expenses incurred in laying out the settlement, with any remaining sums to be spent on the construction of roads, bridges, docks and other public works, followed by expenditure on 'establishing endowing and maintaining Public Schools and other Public Institutions' and, lastly, in promoting emigration to the settlement from other places.

Given that Māori retained virtually no lands with a water frontage on the western side of the Bay, this was in some respects a radical measure, effectively proposing as it did the compulsory acquisition of what were legally European lands for the purposes of an experimental settlement intended to promote assimilation in the north. Yet C.W. Richmond, the Native Minister, made it quite clear that if the people of the north opposed the legislation, they could not expect to receive any assistance from the Crown. As he informed the House of Representatives during the second reading of the Bill:

> The Bay of Islands District was now tranquil; it had been likened to an extinct volcano. But those slumbering fires might break out again, and it was the duty of the Government to guard as far as possible against such a contingency. The Natives there were at present well-disposed: of their own accord they had re-erected the flagstaff, the emblem of the Queen's sovereignty; and the desire of the Government was to take advantage of the opportunity, and to form a settlement in which Natives and Europeans could meet upon absolutely equal terms, and be governed in reality by the same laws. This would go far towards raising the whole district from the stagnant, unprogressive state into which it

> had lapsed...The Government would do their best to pass the Bill, and could do no more. If the Bill was thrown out, if "the nightmare Life-in-death" were preferred for the Bay of Islands, the Government would wash their hands of the responsibility incurred. And, if the people at the Bay of Islands blindly rejected the attempt now made to regenerate the district, the loss must be on their own heads.[371]

Richmond admitted that the measure was 'quite experimental in its character', but declared that the site selected for the settlement, Kerikeri, had been thoroughly inspected by Browne and accompanying officials and found to possess many advantages.[372] Opposition from those who feared that the government establishment at Kororareka would be moved to the new settlement was short-sighted.

John Williamson informed the House that although the Provincial Government had been anxious to promote the colonisation of the north it found the problems standing in the way of this such that this could not be done without significant central government support:

> there had been every desire to revive the settlement of the Bay of Islands district; but, owing to the all-but recently unsettled land claims, and to Native questions likewise, it had been found impracticable to effect much improvement in that district; and, however anxious the present Provincial Government had been that the Bay of Islands should participate in their general plans for the advancement of the province, and for the establishment of eligible townships, it found...that it could not even make the attempt with any prospect of success, unless with the aid of the General Government. The district had certainly been much neglected: still, he believed it was destined to become at no distant day a very flourishing portion of the colony.[373]

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[371] 11 June 1858, NZPD, 1856-1858, pp.515-16, [docs, vol.14, pp.4783-4784].

[372] 27 May 1858, NZPD, 1856-1858, p.472, [docs, vol.14, p.4782].

[373] 11 June 1858, NZPD, 1856-1858, p.517, [docs, vol.14, p.4784].

Hugh Carleton, the representative for the Bay of Islands in the House, declared that he had:

> done what he could for the Bay of Islands, but there was one grand obstacle to his endeavour: the want of land for sale. He could himself have colonized the Bay of Islands had he been able to tell newcomers where they could find a piece of land. But the General Government of the day was remiss, and even discouraged the acquisition of land from the Natives at the Bay of Islands. Yet it was of greater importance, politically, to acquire land from the Natives at the Bay of Islands than in any other part of the province. He had always urged upon the Government the advisability of securing their rear, of obtaining a safe country to fall back upon, of not leaving Auckland between two fires, of acquiring the narrow country at the northern end of the Island and establishing themselves firmly there, instead of purchasing here and there in the broad southern district, scattering settlers about to be at the mercy of the Natives. But not only did the Government in those days decline to purchase from the Natives, they would not allow that to be sold which they had.[374]

Carleton's emphasis on the need to secure their northern flank was an argument which began to take on real force as conflict with the Waikato-based Kingitanga movement appeared increasingly likely. Efforts at the renewed colonisation of the north did not just make good economic sense, but were a smart move politically as well. The failure to address the very real economic concerns of northern Māori had been a major contributing factor to the outbreak of war there in the 1840s. The Crown simply could not afford to allow further such concerns to lead to more conflict in the north. They had enough on their plate simply dealing with the King movement. Moreover, as Edward Stafford told the House, the facts of the Bay of Islands' present position were clear:

> it was actually in a state of retrogression, which was clearly proved by a reference to tables of the exports and imports of the Bay of Islands within the last four years. In 1853 the exports amounted to £511 15s., and in four years

[374] 11 June 1858, NZPD, 1856-1858, p.519, [docs, vol.14, p.4785].

> the increase was less than £70; and in 1855 the total value of exports amounted to £43. In fact, the district was absolutely dead, as to any power within itself to increase in commercial or social importance and, with the existence of such facts as those, surely it was time for the Government to take some steps in the matter.[375]

Few could argue with such stark statistics, and despite the doubts some members had as to the wide-ranging powers the Bill proposed placing in the hands of the government, a majority decided the situation in the north was serious enough to warrant allowing such authority to be exercised. In December 1858 Donald McLean had recorded in his journal, upon visiting the area, that:

> The North of New Zealand requires the infusion of a colonizing spirit. The purchase of land from the natives, and the earnest co-operation of the Government, to give it a start.[376]

In voting in favour of the Bay of Islands Settlement Bill members of Parliament had acknowledged this sentiment with a blueprint for action.

Richmond's memorandum on the Bill, which was reserved for the Royal Assent, noted that:

> Under the operation of the Acts for the settlement of the old Land Claims of the North, and by purchase from the Natives, the Government already is, or shortly will be, in possession of considerable detached portions of land on the western, or mainland, side of the Bay. The Bill enables the Government to take possession of certain adjacent lands in the hands of Europeans, compensating the owners for the loss of their property. It is contemplated to

[375] 11 June 1858, NZPD, 1856-1858, p.522, [docs, vol.14, p.4787].

[376] McLean, Journal (typescript), 18 December 1858, vol.4, MS-1287, ATL, [docs, vol.24, p.8368].

> increase the tract of land thus acquired by further purchases from the Natives. Upon this territory it is intended to establish a new settlement.[377]

Although Kororareka possessed the best anchorage in the Bay, the town there was 'cut off from all communication with the mainland', was sited on a rugged peninsula and was, as a military position, 'indefensible'. After careful inspection Kerikeri had therefore been selected as the preferred site for the new settlement and all of the inhabitants of the Bay, European and Māori, were 'almost without exception, desirous of seeing the Government provided with the necessary powers for undertaking the systematic colonization of this part of the country; to which, although it contains the oldest of the British settlements, a regular stream of emigration has never yet been directed'. It would, Richmond added, be an integral part of the scheme 'to dispose of a considerable proportion of the sections in the new settlement to Natives, either gratuitously, or in exchange for their inland possessions'. The Native Minister observed further that:

> The Ngapuhi, who inhabit this part of New Zealand, are perhaps the finest of its Tribes. They have been longer and more closely in contact with Europeans than any other, and are at the present time, more loyally disposed, and more anxious to promote European settlement. It is hoped that the present scheme may induce them to ascend another step in the social scale, by acquiring separate holdings in an European community, the local affairs of which will be administered by old and experienced settlers, individually known to the Natives for a long series of years, and possessing a thorough knowledge of their character.[378]

Prior assurances that there would be no distinction between Māori and Pākehā in the new settlement and that they would 'meet upon absolutely equal terms' were thus already being undermined by statements that the township would be administered by a few worthy old settlers to be appointed by the government. Still, Richmond hoped

[377] C.W. Richmond, memorandum, 29 September 1858, AJHR, 1860, E-1, pp.6-7, [docs, vol.12, pp.3776-3777].

[378] Richmond, memorandum, 29 September 1858, AJHR, 1860, E-1, p.7, [docs, vol.12, p.3777].

that 'the prospect of obtaining the advantages which such a plan secures would be found a strong inducement to the natives to release their territorial rights'.[379] If northern Māori could be persuaded to give up their communal rights to their 'waste lands' in exchange for individual Crown grants to sections within the new, Pākehā-controlled settlement operating under British law then, in so far as Richmond and other officials were concerned, a great step towards ending the 'beastly communism' of Māori society would have been gained. Whereas northern Māori simply wanted a township to reverse their economic fortunes and gain improved access to health care, education, and other related benefits, Crown officials, it seems, could not see the new settlement as being anything less than a beachhead for the assimilation, 'civilisation' and advancement of Māori.

It was a lot to load on to one, still paper, township. It was not until August 1859 that notice of Royal Assent to the legislation was gazetted in New Zealand.[380] H.T. Kemp reported to McLean from the Bay that same month that:

> news of the confirmation of the Bay of Islands Act has reached us & every body is on the move & looking out to see what the Government will do: but especially the Natives, to whom the promise was personally made by the Governor: I hope nothing may happen to throw discredit upon the Government. ...
>
> If therefore something is not done for the north in general the whole of the Native people will be much exasperated: I dont know what ministers may think, but for the Governor's sake, it is to be hoped they wont grow lukewarm. You know I am no Croker [sic], but a crisis of this kind should be fairly laid before His Excellency, & I could not name it to a better friend than yourself, having the interests of the natives, as well as our own at heart.[381]

[379] Richmond, memorandum, 19 August 1858, AJHR, 1860, E-1, p.22, [docs, vol12, p.3792].

[380] *New Zealand Gazette*, 25 August 1859, p.193, [docs, vol.24, p.8175].

[381] H.T. Kemp to McLean, 1 August 1859, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3153-3157]; McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, pp.2830-2832]. Emphasis in original.

There were other problems presenting themselves. The popularity of a township among northern Māori was becoming so high that some groups were now insisting on one being established on their lands as a condition of transacting these with the Crown. Beyond Kerikeri, Kawakawa was the other site frequently suggested for a possible township. T.H. Smith reported in April that the survey of the large Kawakawa block was finished and asked McLean about the prospects of a township being established there, observing that, '[t]he natives consider that the Govr. is to a certain extent pledged to form one as they were urged when asking for one to offer a large extent of country'.[382] Having provided the land, in other words, they now sought the real payment for this in the form of their own township. As the *Southern Cross* observed:

> The Kawakawa district is indisputably one of the finest to the north of Auckland, and it is much to be regretted that the negotiations for the extinction of the native title have not been long since concluded. The natives are willing to sell, and the only dispute is about the price. The original offer on the part of the Government was unreasonably small, but better terms have since been offered – £1000 for the two blocks, roughly estimated to contain from seventeen to twenty thousand acres. We were told that the natives would close with this offer, on one condition, – that a township, for which they would *give* a thousand acres in, should be established there. To form a second township, before the success of [the] first should be assured, would be evidently most impolitic; we have merely made mention of the stipulation in order to show how heartily the natives enter into the scheme. There is no sufficient reason why, at a future time, their desire should not be complied with.[383]

[382] Smith to McLean, 29 April 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, p.2823].

[383] *Southern Cross*, 21 January 1859, [docs, vol.19, p.6384].

This was no doubt also the line adopted by Crown officials in concluding the deal for Kawakawa. And in the 1860s northern Māori continued to remind the government of their expectations that a township should be located there.[384]

Yet more than three years after the passage of the Bay of Islands Settlement Act, northern Māori were still waiting for their first township at Kerikeri. In March 1860 the area subject to the Act was increased from the 15,000 acres referred to in the schedule to the 1858 Act to encompass a much larger district estimated at 199,000 acres. But at the same time the lands actually set apart for settlement purposes were proclaimed as covering an area of 9200 acres in the vicinity of Kerikeri.[385] By the following year, the site actually earmarked for the township (some 2320 acres) had been acquired from its owner, Edmonds, and further lands extending west as far as Lake Omapere and Okaihau had been acquired from Māori for rural sections.[386] The lands in question had also been surveyed and sub-divided, though not without some controversy. The government surveyor, Andrew Sinclair, criticised the surveys completed by William Clarke as containing 'numerous inaccuracies and many traces of hurried operations'.[387] Colonel Mould, whose report in 1858 had been instrumental in the selection of Kerikeri as the preferred site for the township, and who was responsible for engaging Clarke's services, admitted that there were 'undoubtedly some small inaccuracies in the surveys', but claimed that overall they were among the best he had seen.[388]

In any event, it soon became apparent that the surveys were not the cause of the delay in establishing a township at Kerikeri. The Colonial Secretary, Edward Stafford, later informed a parliamentary committee that the delay had been occasioned by three factors, including the non-settlement of a number of old land claims which overlapped

[384] James Kempthorne to Inspector of Public Works, 22 April 1861, IA 1/1870/1329, Arch-NZ, [docs, vol.3, pp.1008-1010].

[385] *New Zealand Gazette*, 1 March 1860, pp.45-46, [docs, vol.14, pp.4522-4523].

[386] Evidence of Francis Dillon Bell, 12 August 1865, Minutes of the Bay of Islands Select Committee, Le 1/1865/3, Arch-NZ. [Unable to be copied].

[387] Andrew Sinclair to Inspector of Public Works, 6 March 1861, IA 1/1870/1329, Arch-NZ, [docs, vol.3, p.1012]. Emphasis in original.

[388] Mould to Colonial Secretary, 3 June 1861, IA 1/1870/1329, Arch-NZ, [docs, vol.3, pp.1004-1007].

into the district earmarked for the settlement, the 'necessary delay required to extinguish the Native title over blocks of superior quality' which was it deemed desirable to include within the scheme (before, presumably, these appreciated in value through their proximity to the new township) and, thirdly, the lack of funds with which to meet the necessary expenses incurred in surveying the lands in question and paying compensation to owners whose lands had been included within the boundaries of the new settlement.[389] Although the whole scheme was intended to be self-funding, this was reliant on lands being made available for sale at an earlier stage with which to fund further development of the area in question. F.D. Bell stated in 1865 that although lands might have been sold in 1859:

> I do not think they could have done so after February 1860, when the Taranaki war broke out; because the plan of the Bay of Islands Settlement was for a mixed settlement of Europeans & Natives; and the successful prosecution of such a scheme required the existence of confidence which the war destroyed.[390]

Mould noted in September 1861 that 'the Taranaki War having intervened, it was considered advisable to suspend the sales until a prospect of peace would cause a rise in the then depreciated value of land'.[391] The Inspector of Public Works further urged that:

> the time has now arrived when the Government may reasonably expect to obtain an adequate price for the lands within the Settlement, and if the Government desire to realize, I would propose that a portion thereof should be sold, and that the proceeds should be devoted to the commencement of such local improvements as will enhance the value of the remainder and give the settlement a start.

[389] Evidence of Edward Stafford, 9 August 1865, Minutes of the Bay of Islands Select Committee, Le 1/1865/3, Arch-NZ. [Unable to be copied].

[390] Evidence of Bell, 12 August 1865, Minutes of the Bay of Islands Select Committee, Le 1/1865/3, Arch-NZ. [Unable to be copied].

[391] Mould to Colonial Secretary, 16 September 1861, IA 1/1861/1837, Arch-NZ, [docs, vol.3, pp.933-939].

> Previous to the sale, Regulations for the disposal of the lands will be required to be made, and I would submit that they should be of such a liberal character in regard to the Natives that they may be induced to locate themselves in the Settlement, bringing them into immediate contact with the Europeans under a common law and municipal regulations, which would doubtless tend to promote their civilization, and harmony between the races.[392]

These were objects which the Auckland Provincial Government simply was not equipped to implement, Mould added, since their land regulations were solely framed towards European colonisation. Only the general government, acting under the provisions of the Bay of Islands Settlement Act, could 'promote a joint harmonious colonization by the two races'.

The general government now cared little for such lofty ambitions, however, and was determined simply to hand over the lands to the provincial government for ordinary disposal as soon as possible.[393] That this did not happen until 1870 was a consequence solely of the general government's determination to recoup its outlay (some £6699 by 1865) from the provincial government and the latter's understandable unwillingness to accept responsibility for such a sum.[394] In 1862 the Auckland Superintendent complained that it was 'exceedingly improbable that the sales of the Town and Suburban lands will realise a moiety of that outlay of the General Government which the Province is expected to refund' and observed that '[t]he operation of the "Bay of Islands Settlement Act" has been practically to close that district for four years, and to prevent immigrants from obtaining land there'.[395] In 1864 the general government indicated their willingness to proclaim any 'reasonable & proper' regulations

[392] Mould to Colonial Secretary, 16 September 1861, IA 1/1861/1837, Arch-NZ, [docs, vol.3, pp.933-939].

[393] William Fox, minute on Mould to Colonial Secretary, 18 September 1861, IA 1/1861/1837, Arch-NZ, [docs, vol.3, p.933].

[394] J.C. Richmond to Auckland Superintendent, 28 June 1865, Le 1/1865/3, Arch-NZ. [Unable to be copied].

[395] Williamson to Colonial Secretary, 20 May 1862, Le 1/1865/3, Arch-NZ, [docs, vol.3, pp.955-956].

proposed by the province for disposal of the special settlement lands.[396] The regulations, duly forwarded by the Auckland Superintendent in April 1864 and gazetted less than a week later, bore a remarkable similarity with the Auckland Waste Lands Act of 1858, providing for free grants of 40-acre lots within the Bay of Islands Special Settlement to be awarded to intending immigrants over the age of 18 after 12 months occupation (or 20-acre lots in the case of those aged between five and 18 years).[397]

Remarkably, the regulations said nothing about Māori and made no provision whatsoever for the local tribes to likewise receive free or even *any* grants of land within the special settlement. Immigrants from Ulster – the intended target of the regulations –[398] were apparently deemed more important than the local Māori who had provided considerable areas of land for the settlement and had waited patiently for the Crown to honour Governor Browne's promise of 1858 that they would receive a township. So much for the noble 'experiment' of a township in which Māori and Pākehā would live side by side, united in their determination to return prosperity to the north. They may not have originally been conceived as such, but ultimately such promises proved to be just another ruse by which the Crown could obtain Māori lands at a fraction of their true value. The betrayal of northern Māori was complete.[399]

### 4.4 Kohimarama Conference

In January 1858 northern Māori had reaffirmed their alliance with the Crown, re-erecting the flagstaff on Maiki Hill and expressing their willingness to transact lands

[396] Alfred Domett, memorandum, 19 January 1864, IA 1/1864/299, Arch-NZ, [docs, vol.3, pp.942-943].

[397] Regulations under the Bay of Islands Settlement Act 1858, in William Daldy, *New Zealand. Bay of Islands Special Settlement in the Province of Auckland*, London: Rees and Collin, 1865, pp.9-12, [docs, vol.14, pp.4873-4875].

[398] Superintendent to Colonial Secretary, 4 November 1863, Le 1/1865/3, Arch-NZ. [Unable to be copied].

[399] The Bay of Islands Settlement Act was eventually repealed in 1870 in order to overcome legal difficulties standing in the way of leasing the Kawakawa coal fields from the Auckland Provincial Government to a private company represented by Frederick Whitaker. Northern Māori had long since failed to feature in discussions among officials as to the purpose or object of the legislation.

in return for renewed prosperity. Their long relationship with the British Crown had, on the face of it, entered a new and more positive phase in which the misunderstandings of the past would be forgotten. Instead, both Governor Browne and northern leaders committed themselves to working together to revive the stagnant Northland economy. The kind of meaningful partnership implicit in Te Tiriti o Waitangi at last appeared capable of fruition.

Yet privately, at least, Crown officials remained deeply suspicious of northern Māori. And as conflict loomed elsewhere the situation in the north was closely monitored. In March 1860 the first shots were fired in the conflict between Wiremu Kingi and his supporters and Crown troops seeking to enforce the survey of Waitara lands purchased against the wishes of Kingi and other owners. Frederick Maning at Hokianga was bullish, visiting Governor Browne to offer his services and those of '1000 Ngapuhis' for the fight at Taranaki.[400] In 1861 he informed McLean that every able-bodied man at Hokianga would offer his services for the fight if, as expected, the conflict at Taranaki spread to the Waikato.[401] Some settlers, though, were more anxious about the fact that Maning had been distributing gunpowder to the Hokianga tribes 'while a portion of the Natives are in open rebellion against the Law and the Queen's Supremacy in these Islands',[402] while H.T. Kemp offered a rather less upbeat assessment of the true state of feelings in the north. Kemp informed McLean in April 1860 that:

> The Natives generally speaking have taken a favourable view of the question at issue between Wiremu Kingi & the Government. They have I think come to a decision in their own minds that it would be a losing game to oppose the Government, notwithstanding some sympathy prevails on the question of Land; this I think we might very reasonably expect to find under present

[400] Browne to McLean, 30 April [1860], McLean Papers, folder 183, ATL, [docs, vol.9, p.3003].

[401] Maning to McLean, 27 May 1861, McLean Papers, folder 444, ATL, [docs, vol.10, pp.3192-3195]; McLean Papers, typescript, vol.19, MS-1324, ATL, [docs, vol.9, pp.2881-2883].

[402] *New Zealander*, 6 March 1861, [docs, vol.21, p.7027]. On the contentious issue of restrictions on the sale of firearms and ammunition to Māori at this time see Craig Innes, 'Arms Control in New Zealand 1854-1861', MA thesis, Massey University, 2005.

> circumstances; to counteract this as far as we may be able, will probably become our chief endeavour for some time to come.[403]

In July 1860 northern leaders had the opportunity to express first-hand their feelings on the Taranaki conflict to the governor, McLean and other officials at a conference convened by the Crown largely with a view to counteracting any latent sympathies for Taranaki Māori or their Kingitanga supporters. Browne had convened the conference of more than 200 chiefs from throughout the country largely with a view to isolating the Taranaki 'rebels' and the King movement and confirming the allegiance of as many other tribes as possible.[404] Given that northern Māori had already confirmed their allegiance to (or rather, their alliance with) the Crown in 1858 their responses at Kohimarama in 1860 were predictably warm towards their ally – and were seemingly reciprocated in Governor Browne's statement to the conference that the provisions of the Treaty of Waitangi would be maintained 'inviolate'.[405]

Tamati Waka Nene told the conference that he had but one governor, who should be a 'King' for the Māori people ('kotahi nei toku Kawana. Hei Kingi tenei mo tatou').[406] Other northern leaders also asserted that they had embraced the Crown and Pākehā from the first.[407] But it was the speeches of those northern Māori who had fought against the Crown in the 1840s which highlighted the significance of their renewed alliance from January 1858. Hori Kingi Tahua, for example, informed assembly that following the Northern War:

> Kawiti consented to the word of Governor Grey, and promised to cease from all disturbances. I consented to this, and said, It is good. Then this Governor visited the Bay of Islands. We held meetings for the purpose of erecting the

[403] Kemp to McLean, 27 April 1860, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3159-3160].

[404] Claudia Orange, 'The Covenant of Kohimarama: A Ratification of the Treaty of Waitangi', NZJH, vol.14, no.1, 1980, p.64.

[405] *Te Karere Maori*, 14 July 1860, p.6, in Armstrong Supporting Documents, Sec.1, p.4.

[406] *Te Karere Maori*, 14 July 1860, p.15, in Armstrong Supporting Documents, Sec.1, p.8.

[407] Speeches of Te Manihera and Wiremu Tete, *Te Karere Maori*, 14 July 1860, p.19, in Armstrong Supporting Documents, Sec.1, p.10.

> flagstaff at Maiki at our own expense – we consented to this, erected the flagstaff, and called it the Union of the two Nations.
>
> Ka whakaae a Kawiti ki te kupu a Kawana Kerei. Ka mea a Kawiti ko nga wahi o te rarurarau me whakarere. Ka whakaae atu au, Ae, e pai ana. Muri rawa iho ka tae tenei Kawana ki raro, ka runangatia e matou, kia whakaarahia te kara ki Maiki, ma matou ano e mahi. Ka whakaae matou, na, ka whakaarahia te kara – ka huaina tona ingoa ki te Whakakotahitanga o nga iwi.[408]

Wi Pohe informed the gathering that '[t]he time of our identifying ourselves with the interests of the Pakeha was when the flagstaff was erected at Maiki: this was our consenting for ever and ever' ('Ko te tapokoranga a matou ki te Pakeha, koia tena ko te aranga o te kara ki Maiki. Ko to matou whakaaetanga tenei, ake, ake tonu atu').[409]

Yet beyond these expressions of friendship and alliance, northern leaders at the conference made it clear that they continued to expect the Crown to acknowledge their own customs and the authority of their chiefs in the administration of law. A simplified set of rules for the administration of justice in Māori communities had been prepared by the retired Chief Justice, Sir William Martin, for discussion at the conference, but many speakers, including some northern ones, objected to the suggestion that fines for pūremu, or adultery, should be paid to the Crown, rather than to the injured party as had become standard practice in communities governed by rūnanga.[410] Te Manihera, for example, considered that the effect of such a change would be to increase the number of murders as the aggrieved would be required to seek their own utu for such offences.[411] Tango Hikuwai complained that he had received just £25 for three years work as an Assessor – the whole sum of which had been expended in providing for those who came to him with their disputes – and

[408] *Te Karere Maori*, 14 July 1860, p.19, in Armstrong Supporting Documents, Sec.1, p.10.

[409] *Te Karere Maori*, 14 July 1860, p.19, in Armstrong Supporting Documents, Sec.1, p.10.

[410] Vincent O'Malley, 'Runanga and Komiti: Maori Institutions of Self-Government in the Nineteenth Century', PhD thesis, Victoria University of Wellington, 2004, p.42.

[411] *Te Karere Maori*, 31 July 1860, pp.17-18, in Armstrong Supporting Documents, Sec.1, pp.34-35.

suggested that £50 per annum would be a fairer level of remuneration.[412] Other northern leaders suggested that equal numbers of Māori and Pākehā should sit together on juries.[413] Wiremu Pohe thought that the time had come for Māori to abandon the practice of taua muru, thus highlighting the fact that, in the north especially, these remained an accepted response to transgressions of customary law.[414]

Even on the central issues of the Taranaki War and the King movement the responses from northern leaders were not as unambiguous as the government might have expected. Tamati Waka Nene defended his 'friend', the late King Potatau Te Wherowhero, as a man of peace and firm ally of the Pākehā;[415] other northern leaders suggested that the best response to the conflict at Taranaki was to 'sleep upon the earth', though if the governor made a direct request to them they would agree to fight.[416] Maning's suggestion that northern Māori were spoiling for a fight and would leap at the opportunity to go to Taranaki or Waikato was not apparent in the contributions of northern chiefs to the conference. At best, they made it clear that they would be reluctant recruits to the cause, honouring their obligations under their alliance with the Crown but without great enthusiasm for the fight.[417]

But perhaps the most controversial contribution to the conference from one of the northern leaders came from Maihi Paraone Kawiti. The man responsible for re-erecting the flagstaff on Maiki Hill – the supposed symbol of the supremacy of British law – had been more recently dismissed from his position as an Assessor for his involvement in condoning the killing of a man accused of practising witchcraft and his son. Kawiti told the conference that the decision to kill the man had been made by

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[412] *Te Karere Maori*, 31 July 1860, p.11, in Armstrong Supporting Documents, Sec.1, p.31.

[413] *Te Karere Maori*, 3 August 1860, pp.66-67, in Armstrong Supporting Documents, Sec.1, p.91.

[414] *Te Karere Maori*, 31 July 1860, pp.25-26, in Armstrong Supporting Documents, Sec.1, pp.38-39.

[415] *Te Karere Maori*, 31 July 1860, pp.52-53, in Armstrong Supporting Documents, Sec.1, p.52.

[416] *Te Karere Maori*, 31 July 1860, pp.11-12, in Armstrong Supporting Documents, Sec.1, pp.31-32.

[417] H.T. Kemp also believed that although northern Māori would be 'prepared to co-operate with the Government in putting down any hostile aggression on the part of the Waikatos', this proposal was 'generally speaking, accompanied with the expression of an earnest desire that peaceful means should *first of all* be tried to bring about a reconciliation'. Kemp to Chief Commissioner, 28 September 1861, AJHR, 1862, E-7, p.20, [docs, vol.12, p.4056].

a rūnanga, 'in the presence of the small and the great', at which it was proven that the dead man had himself been responsible for the death of Kawiti's own brother and many others besides. The reason that the case had not been submitted for trial, Kawiti explained, was that the English law relating to murder was not applicable in the case of those caught practising witchcraft:

> it is not the crime of murder, because in murder there is only one victim, and the murderer is quickly taken and dies as satisfaction for that one; but in the case of the wizard, he destroys many by his incantations, before he is taken and dies – a single individual as satisfaction for the many whom he has destroyed. There is one aggravation in murder: a man puts forth his hand, and blood flows, therefore it is considered a very great crime, but there can be no witness in the case of witchcraft.
>
> e kore e rite ki te hara o te tangata kohuru, no te mea kotahi anake te tangata e mate i te kohuru, hororo tonu te hopu i a ia, ka mate ia hei utu mo te mea kotahi; tena ko te tangata makutu, kia tini nga tangata e mate i a ia te makutu ka tahi ka mate tona kotahi hei utu mo nga tupapaku kua maha. Kotahi te kino o te mate kohuru, pa ana te ringa a te tangata ka rere te toto, koia i meinga ai he tino hara nui; kahore he tangata hei hopu i te makutu.[418]

Despite admitting to having been in 'error' for his role in killing the accused 'sorcerer', Kawiti's speech thus effectively constituted a justification of the death, based on the administration of a form of justice derived from customary Māori law as administered by a rūnanga representing the community in which it had occurred. In Kawiti's view, Ngāti Hine had legitimately exercised their right to perform an act of capital punishment for a member of their community found guilty of one of the most serious crimes which could be committed in Māori society.

Certainly this was how Kawiti chose to portray the incident in his earlier correspondence with the Crown over the whole affair. In a letter published in the *Southern Cross*, Kawiti wrote:

[418] *Te Karere Maori*, 3 August 1860, pp.71-72, in Armstrong Supporting Documents, Sec.1, pp.93-94.

> Do not ask any questions regarding this matter. Be not sad about it; wonder not, and shake not your head. Do not call into question the principle upon which these people have been given over to the death, to the grave, by the Ngatihine. Let me explain the thing to you so that you may know it fully. They were guilty of witchcraft, and, therefore were killed.[419]

Kawiti explained that the dead man had been driven from Kawakawa in the 1840s, when he first began practising witchcraft, and had subsequently been responsible for a number of deaths at Mahurangi, Hauraki and elsewhere before being driven back to Kawakawa. Since his return, he had been responsible for more deaths, but when Kawiti's own brother, Te Wikiriwhi Te Ohu, had died a rūnanga of more than 200 people had condemned the man to be shot for causing his death. In Kawiti's view, 'it was right that these wicked persons should die, as a payment for their own evil work, for witchcraft is even as murder'.[420]

Kawiti had not actually participated in the killing, but was merely accused of having 'acquiesced in the sentence of the meeting', a result which the government mouthpiece *Te Karere Maori* could only attribute to a misplaced reversion to Māori customs.[421] The tribes at the Bay of Islands 'had professed to adopt English law', the newspaper thundered, but had instead committed an 'act of barbarity', the only excuse for which could be 'that it is in accordance with Maori customs of by-gone days, before the light of Christianity had been brought to this island'. Although the English 'once had laws to punish supposed wizards and witches', readers were informed, the people were now 'too enlightened to fear witchcraft' and no longer took any notice of such laws (though one might ask why, such being the case, English laws against witchcraft were not repealed until the second half of the twentieth century).[422]

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[419] *Southern Cross*, 11 October 1859, [docs, vol.19, pp.6503-6504].

[420] *Southern Cross*, 11 October 1859, [docs, vol.19, pp.6503-6504].

[421] *Te Karere Maori*, 31 October 1859, [docs, vol.18, pp.6123-6127].

[422] One visitor to the north in 1857 observed that 'belief in Witchcraft and ghosts is still almost universal among them [Māori]', but at the same time added that 'even now many in England firmly believe in witch craft & the evil eye, and would not scruple to put the supposed practisers to the trial by

This time the government did not even send an official party north to 'remonstrate' with the chiefs, as they had done in 1847, let alone attempt to arrest those who had openly defied British law and made a mockery of British claims to sovereignty over the district. Instead, the Native Office wrote to Kawiti to express the governor's 'deep regret of the revival of a barbarous custom among a people who have so lately professed to abandon the old Maori usages and to adopt the laws of England'. Kawiti had demonstrated by his actions that he was unfit to hold the position of Assessor, the chief was informed, and had accordingly been removed from office.[423] By the end of 1861, Kawiti was back on the government payroll as a member of the Bay of Islands District Rūnanga and it was not long before he regained his assessorship.[424] Even his dismissal proved in practice to be little more than a temporary suspension.

The *Southern Cross* alleged another aspect to this whole affair, however, believing that witchcraft was merely a pretext for the killings and that Te Wikiriwhi had died partly as a consequence of the Crown's efforts to purchase the Kawakawa block. Kawiti's party, the newspaper noted, had for a long while been opposed to the sale of their lands but over time this objection had gradually waned 'until at last those who were in favour of selling became predominant'. Even so, the chief did not wish to be seen as the head of the land-selling party and hence this duty had fallen to his brother, who became 'the main agent in overcoming the scruples of recusants, and in effecting a sale to Government'.[425] Having agreed on the sale of a large block for a certain sum, the *Southern Cross* alleged, the owners 'were induced to complete the sale for a portion – stated to be the finest – on the understanding that the rest was to be presently taken up, at the price agreed on, but...this part of the engagement was not adhered to':

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ordeal'. John T. Stewart, 'A Trip in Northern New Zealand', MS 1387, AWMML, [docs, vol.11, pp.3694-3695].

[423] T.H. Smith to M.P. Kawiti, 2 November 1859, *Te Karere Maori*, 15 November 1859, [docs, vol.18, pp.6130-6131].

[424] George Clarke to Native Minister, 30 December 1861, Enclosure 1, Chiefs of the District Runanga, AJHR, 1862, E-9, Sec.I, p.5, [docs, vol.12, p.4064]; A Return of All Sums Paid Assessors, AJHR, 1862, E-12, p.4, [docs, vol.12, p.4092].

[425] *Southern Cross*, 1 November 1859, [docs, vol.19, pp.6521-6522].

> Wikiriki thought that he had fallen into a trap, and taken the whole party with him. The consciousness that he ought to have insisted upon the original understanding, that the whole of the land should be taken in one block, preyed upon his mind, and the mortification, to which a native is acutely susceptible, of having misled his friends, appears to have either determined the disease, or accelerated its progress.[426]

The 'aspect of native affairs, just now, at the Bay is very unsatisfactory', the paper added, and discontent was brooding. Those who had looked to the government to enforce British law would probably be disappointed, but failure to act would likely encourage the relatives of the victims to take the law into their own hands and set a precedent for the future.

H.T. Kemp denied that purchase operations at the Bay were in any way connected with the death of Kawiti's brother or that matters there were in an unsatisfactory state. But according to the *Southern Cross* the relatives of the supposed tangata mākutu declared that the quarrel was about the land and that accusations of witchcraft were merely a pretext for the murder. Wikiriwhi had 'died of a complaint the symptoms of which were aggravated by highly excited feeling, and...Marsh's people had a grudge against the so-called wizard on account of the share he had taken in making good the claim which was supposed to have baulked the transaction with the Government'.[427]

Whether mākutu or Crown purchasing had been the cause of Wikiriwhi's death, the subsequent killings which it had provoked demonstrated that in the most fundamental test of where authority in the north lay – the power of life and death – it continued to remain vested in the tribes. Twenty years of nominal British sovereignty and the renewed alliance with the Crown had done nothing to alter this fact. Kawiti had been quickly accepted back into the ranks of salaried government rangatira in the north because the Crown realised that what little effective authority it was able to exercise in the area was largely through chiefs such as him. In a sense the government needed

[426] *Southern Cross*, 1 November 1859, [docs, vol.19, pp.6521-6522].

[427] *Southern Cross*, 17 January 1860, [docs, vol.19, pp.6550-6551].

Kawiti more than the chief needed the government. As McLean had observed in 1857, the government could not hope to enforce British law in the north except through the agency of the chiefs. Even that was a long shot: while many chiefs were willing to accept such appointments, they tended to see these as belated Crown recognition of their customary authority, rather than implying or imposing any obligation on them to enforce British laws against their own people. Indirect rule may have been the Crown's objective, but Māori had their own, quite different *take* to pursue.

Yet Kawiti had at least felt obliged to admit at Kohimarama that he had been in error in condoning the events at Kawakawa and had been forced to listen to McLean reproach him on the subject before the whole assembly.[428] For a chief of Kawiti's standing, this must have been a galling experience and there were some grounds for thinking that this alone might have acted as a deterrent to future killings of the kind which had recently occurred at Kawakawa. Moreover, the Kohimarama conference as a whole had proven a positive experience. Many of the chiefs who attended felt that, for the first time ever, the Crown had provided them with the opportunity for meaningful involvement in the formulation of policies impacting on Māori. Effectively denied the opportunity to vote for, or participate in, the General Assembly, Māori were increasingly concerned at a national level 'that they were losing control of their own destinies, and being subordinated to the political and economic power of the settlers'.[429] Kohimarama offered a forum in which the concerns of the chiefs could be freely vented before Crown officials. Nothing like it had been seen before and at the conclusion of the conference the chiefs unanimously petitioned Governor Browne for such gatherings to be 'established and made permanent'.[430]

McLean believed there were strong reasons for acceding to the wishes of the chiefs. As he informed the governor:

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[428] *Te Karere Maori*, 3 August 1860, p.73, in Armstrong Supporting Documents, Sec.1, p.94.

[429] Ward, *Show of Justice*, p.98.

[430] Tamihana Te Rauparaha and 70 others to Governor Browne, 3 August 1860, Le 1/1860/100, Arch-NZ, [docs, vol.5, pp.1800-1803].

> It is abundantly manifest that in the present state of the Colony the Natives can only be governed through themselves. A conference like the present would prove a powerful lever in the hands of the Government for effecting this object.
>
> It might also be made the means of removing many of the difficulties now surrounding the Land Question, and of simplifying the mode of acquiring territory for the purposes of Colonization.[431]

The potential for such conferences to form a 'powerful lever' in the government's efforts at indirect rule were apparent even to the General Assembly, which approved Browne's request that funding be quickly confirmed so that he could announce that a further such conference would be held the following year before the chiefs departed from Kohimarama.[432] There was to be no further such conference convened under Crown auspices, however, as the re-called Sir George Grey did not think it 'wise to call a number of semi-barbarous Natives together to frame a Constitution for themselves' and cancelled the gathering scheduled to take place in 1861.[433] His preferred method of indirect rule was based on more of a localised model than that of a national conference of chiefs.

### 4.5 Browne's 1861 Visit

Browne meanwhile continued to keep a watchful eye on the north until his removal from office in October 1861. In January 1861 'signs of disaffection among the Natives in the neighbourhood of the Bay of Islands' were reported privately to the government. James Clendon, the Hokianga Resident Magistrate, was admonished for failing to provide a full report on this given the 'present excited state of the

[431] McLean, memorandum, 6 August 1860, Le 1/1860/100, Arch-NZ, [docs, vol.5, pp.1796-1799].

[432] Browne, message no.2 to House of Representatives, 7 August 1860, Le 1/1860/100, Arch-NZ, [docs, vol.5, pp.1794-1795]; Minutes of Proceedings of the Kohimarama Conference, 11 August 1860, AJHR, 1860, E-9, p.25, [docs, vol.12, p.3852].

[433] Grey to Newcastle, 30 November 1861, AJHR, 1862, E-1, Sec.II, p.34, [docs, vol.24, p.8165].

country'.[434] Browne and McLean travelled to the Bay of Islands and Mangonui less than three weeks later, informing a gathering of northern Māori at Kororareka on 11 February 1861 that the governor 'has come to pay a friendly visit to Ngapuhi, to see them and to hear what they have to say' and denying that the trip was 'in consequence of any rumour that was afloat of an unfriendly nature,– his visit had been previously arranged'.[435] In fact, it had not been. Browne informed Major-General T.S. Pratt, the officer commanding the troops in New Zealand, in late January 1861 that '[i]nformation having reached me that disaffection has been exhibited among the tribes of the Bay of Islands who have been hitherto the most loyal of Her Majesty's subjects, it is my intention to visit that district after the arrival of the English mail unless prevented by unforeseen circumstances'.[436]

Despite its unexpected nature, Mangonui, Rewa, Kawiti, Wi Te Tete and other chiefs expressed their pleasure at the governor's friendly visit to them and reiterated their own warm feelings towards the Queen's representative. Tamati Waka Nene, though, noted that:

> One thing has sometimes occurred to us, that because we were one people it might be thought that our inclinations would be with those who are now engaged in fighting. We have thought that perhaps when the war has ended at Taranaki it may be extended to this part of the Island. I name this to you because it has been named by the people.[437]

Governor Browne, through McLean, denied 'false reports' in circulation that his intentions towards northern Māori were hostile and asked what possible reason he would have for adopting such a course.

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[434] McLean to Clendon, 22 January 1861, MA 4/4, Arch-NZ, [docs, vol.4, p.1422].

[435] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

[436] Browne to Pratt, 22 January 1861, G 36/3, Arch-NZ. [Unable to be copied].

[437] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

The governor had a further opportunity to publicly deny rumours of the Crown's hostile intentions towards the northern tribes at a hui held at Te Ti the following day. There had clearly been a lack of forward communication with the chiefs prior to the governor's hastily-arranged trip to the north, since the meeting had originally been convened by the tribes to discuss the relaxation of discriminatory laws prohibiting the sale of spirits to Māori. Although some chiefs spoke against such a move, most speakers urged an end to all 'exceptional laws' which denied Māori the same rights as settlers.[438] Browne admitted that there was one law for Europeans and another for Māori when it came to alcohol consumption and that it was equally true that the law was widely flouted but defended the situation. Other aboriginal peoples around the world had suffered a greater loss from the excessive use of spirits than from war and other calamities, and the object of the government in imposing restrictions against Māori use of spirits was to preserve them from a similar fate. He was not prepared to promise to repeal the law, 'but he would be glad to have the subject considered at the next Native Conference, as it was one which involved the welfare of the different tribes throughout the country'.[439]

Yet some speakers at the Te Ti hui declared that they did not wish to go back to Kohimarama. As the original signatories to Te Tiriti o Waitangi, and the tribe with the longest established relationship with the Crown and settlers, Ngāpuhi wanted and expected a conference of their own. Hohaia Waikato, for example, declared:

> I will not go to Kohimarama (to the next Conference). Let the Ngapuhi meet here, for they are your children. It was I that brought you from England – I and Hongi – therefore it is right you should come to us.[440]

[438] The 1847 Ordinance to Prohibit the Sale of Spirits to Natives imposed a maximum fine of £10 for those caught selling alcohol to Māori but was not widely policed. The Bay of Islands District Rūnanga subsequently imposed its own restrictions on the consumption of liquor, but these were again widely flouted. Marten Hutt, *Te Iwi Maori me te Inu Waipiro: He Tuhituhinga Hitori/Maori & Alcohol: A History*, Wellington: Health Services Research Centre/Alcohol Advisory Council of New Zealand, 1999, pp.19, 28.

[439] *Southern Cross*, 1 March 1861, [docs, vol.20, pp.6605-6606].

[440] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

Browne did not respond to this request, but again denied the 'foolish and unfounded' reports of his hostile intentions towards the northern tribes. A number of speakers at the hui requested that the governor should make peace with the Taranaki tribes, with some declaring that they had become 'anxious at the length of your war with Te Rangitake'.[441] Browne declared that the war had been forced upon him by the cold-blooded murder of Europeans, which was 'very different from the manner in which you carried on the war at this place'.[442] Although the exclusive right of deciding the terms of peace with the Taranaki tribes remained his alone, the governor added, he would be 'glad to consult some of your chiefs, – you being an impartial tribe – on the subject'.[443] In fact, shortly before his removal from office, Browne informed the Secretary of State for the Colonies that he 'hope[d] to be able to bring a number of the Ngapuhi Tribe to assist' in his efforts to crush the Kingitanga, despite considering that 'it will not be safe to rely implicitly on their support'.[444] Their 'loyalty' continued to be considered somewhat shaky.

Given the particular context in which the two Bay of Islands hui had taken place – concerns over the 'loyalty' of the northern tribes and corresponding rumours of the Crown's hostile intentions towards them – neither was an appropriate occasion in which to raise other local grievances (the alcohol law issue, being the original take for the Te Ti hui was, however, another matter). Instead, they had served as a further opportunity for both northern Māori and the Crown to publicly reaffirm their alliance at a time of considerable anxiety and unrest around the country.[445] Despite their obvious unease at the lengthy Taranaki conflict, and the evident desire of most speakers for this to be peacefully resolved as soon as possible, some chiefs had declared that if the governor wished them to go there to fight they would do so as a matter of course. Alliances imposed mutual obligations, and both the offer of military assistance and Browne's promise to consult northern rangatira on the terms of peace

[441] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

[442] *Southern Cross*, 1 March 1861, [docs, vol.20, pp.6605-6606].

[443] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

[444] Browne to Newcastle, 6 July 1861, *Epitome*, A.1, p.73.

[445] McLean believed that their visit to the north had been 'opportune' and had had 'a very excellent effect'. McLean to Sinclair, 6 March 1861, McLean Papers, folder 574, ATL, [docs, vol.10, p.3265].

appeared to reflect this reality. It seems likely, though, that other issues were raised with the governor more discretely. Just over a month later, for example, Browne wrote a memorandum urging the expeditious establishment of the promised township at Kerikeri, as provided for under the Bay of Islands Settlement Act.[446]

It was a similar story at the hui held at Mangonui a few days later. Both the Ngāpuhi and Te Rarawa chiefs present again confirmed their friendly feelings towards the governor, who reciprocated by reassuring them of his peaceful and benevolent intentions towards them.[447] It was here, in fact, that Browne – impressed with the 'steady loyalty' of local Māori, 'their almost isolated position, and the zeal and intelligence' of the Resident Magistrate, W.B. White – proposed piloting an 'improved system' of governance. Through adopting an experimental system of governance in a district where 'the loyalty of the inhabitants is undoubted', Browne believed that:

> Experience may thus be safely gained, and success hoped for, and if, by degrees, the disaffected can be isolated, and surrounded by tribes, having a well ordered plan of Government, there is little doubt that so good an example will be followed.[448]

To this end, Browne proposed that a chief be selected by a hui of the 'Rarawa' tribe to act as the 'Deputy or Superintendent' to the Resident Magistrate, at an annual salary of £100, with two further chiefs to be appointed as his Assessors at £20 per annum. The principal chief would be required to assist the Resident Magistrate in the administration of justice in the district, as well as suggesting to the governor regulations for the local affairs of the district which were likely to be 'conducive to good order, and acceptable to his people'. He would further be required to mark out a 'distinct boundary' between the lands of the 'Rarawas' and those of neighbouring tribes. When this object was accomplished, the governor added, 'every exertion

[446] Browne, memorandum, 20 March 1861, G 36/3, Arch-NZ. [Unable to be copied].

[447] *New Zealander*, 2 March 1861, [docs, vol.21, p.7025].

[448] Browne, memorandum, n.d. [26 February 1861], AJHR, 1861, E-3D, pp.3-4, [docs, vol.12, pp.3940-3941].

should be made to indicate the lands belonging to the different "hapus," until it may be hoped that an individualization of title may be ultimately accomplished'.[449] The tribes of the far north would thus be rewarded for their 'steady loyalty' by being made guinea pigs for a scheme of indirect rule and individualisation of title to their customary lands.[450]

The only problem with Browne's proposal was that, as officials diplomatically tried to point out, it provided the basis of an ill-conceived, rather than 'well-ordered', form of government. McLean and Smith, though acknowledging that the area was a good one 'for trying an experiment of the kind proposed', nevertheless noted out that it was 'scarcely probable that the Rarawa would unite in acknowledging one Chief as having supreme authority over all the "hapus," or subdivisions of the tribe'.[451] They further pointed out that Ngāpuhi 'would reasonably expect that privileges granted to the Rarawa should be equally conceded to them as residents in the same Native district'. Rather than appointing a single 'Deputy', the pair therefore instead recommended that 'a few' Te Rarawa and Ngāpuhi chiefs might be 'attached' to the government through pensions or salaries and special appointments to public office, though without the ambitious range of tasks Browne had envisaged for them. Even this was not likely to come cheap, they warned, with any efficient system of local government in the Mangonui district requiring expenditure of not less than £600 per annum.[452]

White thought that 'disease, bad and insufficient food, irregular clothing, improper houses, and great poverty, will soon leave us without a people to experiment on', while the alleged 'apathy' of Māori in his district would, he feared, tend to counteract against the success of any scheme to be trialled at Mangonui. Appointing a sole chief to a salaried position much larger than any other would 'certainly lead to much

[449] Browne, memorandum, n.d. [26 February 1861], AJHR, 1861, E-3D, pp.3-4, [docs, vol.12, pp.3940-3941].

[450] Vincent O'Malley and Stephen Robertson, 'Muriwhenua Land and Politics, 1862-1909', (Report commissioned by CFRT), September 1997, p.24.

[451] McLean and T.H. Smith, memorandum, 28 February 1861, AJHR, 1861, E-3D, pp.4-5, [docs, vol.12, pp.3941-3942].

[452] McLean and T.H. Smith, memorandum, 28 February 1861, AJHR, 1861, E-3D, pp.4-5, [docs, vol.12, pp.3941-3942].

difficulty and jealousy', White warned, and would tend to make it 'much easier to do evil than good'. But if the governor was determined to persist with the plan, then at the very least a 'separate, but similar machinery' would have to be established for the district from Mangonui to Whangaroa since Ngāpuhi would not be prepared to submit their tribal affairs to a Deputy or Superintendent selected from the Te Rarawa tribe.[453] His own alternative proposals involved each hapū electing their own council to suggest rules for the internal governance of their affairs and to assist the Resident Magistrate in the administration of the law. The chairman of each council would then attend a 'Great Council', composed of representatives of each of the hapū, at which rules for the general good of the district would be propounded.

Frederick Weld, the Native Minister, doubted that Māori anywhere in the country, regardless of their perceived 'loyalty', would find the governor's idea of appointing a sole chief to govern their affairs an acceptable one. Everyone, it seems, other than Governor Browne, understood well enough that such a system would be at odds with Māori forms of governance, based as they were on collective decision-making processes. Weld again considered Mangonui an appropriate district in which to attempt to trial some system of state-sanctioned local government for Māori but believed the Crown would also need to be ready to extend the machinery to other tribes if it worked well, for which purposes 'considerable funds' would be required. Either way, nothing could be done in the matter before the General Assembly met to consider the matter and vote any necessary sum required for these purposes.[454] The news which reached the colony in July 1861 that Sir George Grey had been appointed to replace Browne as governor as soon as he could reach New Zealand effectively scuttled plans for an experimental system of government in the far north. But the new governor had his own ideas on this subject and within six weeks of his arrival back in New Zealand in September 1861 he was again touring Northland to explain his even more ambitious proposals for the governance of the area.

[453] W.B. White, memorandum, 30 March 1861, AJHR, 1861, E-3D, pp.5-6, [docs, vol.12, pp.3942-3943].

[454] F.A. Weld, memorandum, 22 May 1861, AJHR, 1861, E-3D, p.3, [docs, vol.12, p.3940].

### 4.6 Grey Returns

It was no accident that Grey had chosen to visit the north before venturing anywhere near the Waikato. As the governor realised, in the event of conflict with the King movement, securing the attachment of the northern tribes would be critical to success. And as local officials continued to remind their superiors, strong tribal connections through intermarriage and the ongoing residence of some Waikato Māori in the north meant this was no certainty.[455] At the same time, given the renewed alliance between the Crown and local Māori after 1858 it was obvious that proposals for a comprehensive system of state-sanctioned local government stood a better chance of ready acceptance in the north than elsewhere. Grey need to shore up support for the Crown in the north, and convince any waverers, before he could tackle the Kingitanga with any confidence. His scheme of 'new institutions' provided the sort of carrot with which he could confidently secure the ongoing allegiance of the northern tribes before dealing with the looming Waikato crisis head on.

Whereas Browne had envisaged spending £140 per annum on a modest experiment in the Mangonui district, Grey advanced proposals soon after his arrival back in the colony which envisaged the Crown spending £49,000 annually across the country. Under his 'plan of native government', the North Island was to be divided into 20 districts, each of which would have its own District Rūnanga operating under the supervision of a Civil Commissioner. Each district would in turn be divided into about six Hundreds, whose own rūnanga would appoint two representatives to the District Rūnanga and have primary responsibility for recommending to the governor the appointment of wardens, constables and other salaried Māori officials from within their communities. The District Rūnanga were to be accorded significant powers under these proposals to recommend by-laws on a wide range of matters of local concern, subject to confirmation by the Governor-in-Council, along with authority to inspect and report upon Native Schools, and construct and control hospitals, jails and roads. They would also have primary responsibility for providing for 'the adjustment of disputed land boundaries, of tribes, of hapus, or of individuals, and for deciding

[455] Clendon to Native Secretary, 2 October 1861, AJHR, 1862, E-7, pp.16-17, [docs, vol.12, pp.4052-4053]; H.T. Kemp to Chief Commissioner, 28 September 1861, AJHR, 1862, E-7, p.20, [docs, vol.12, p.4056].

who may be the true owners of any Native lands', as well as recommending the terms and conditions upon which Crown grants should be issued and authorising land sales.[456]

William Fox, responding on behalf of the cabinet, agreed with Grey's suggestion that land title investigations should be left 'substantially in the hands of the Runanga'. Given the extent of Māori 'jealousy' on the subject, there was, he noted, no alternative to such a course short of 'abstaining from all further purchase'.[457] Grey indicated his willingness to compromise on the main sticking point – his insistence on restrictions on the amount of land any individual could purchase directly from Māori – provided the essential principle that 'no one should be allowed to grasp more land than he can use' was observed, along with occupancy requirements and the consent of the District Rūnanga to any proposed alienation. Grey added that he would 'fear, at present, to go further. The great object is to devise a system which, at this critical time, both Natives and Europeans will gratefully accept'. With the governor further concurring in Fox's suggestion that village rūnanga – 'the rude Native institutions already existing', as the Colonial Secretary described them – should be co-opted to the cause rather than supplanted by imposed (and artificial) rūnanga of the Hundreds, Fox declared that the ministers did not perceive any difference in principle between Grey's views and their own and believed the plan amounted to 'a sound, comprehensive, and practical system' which they were prepared to support.[458] The governor accordingly set off to sell his proposals to Northland Māori.

A hui at Kororareka on 6 November 1861 provided the first opportunity. Grey informed the gathering that:

> The time had come when a change must take place in their government and customs corresponding to that which had taken place in other things. When he

[456] Grey, Minute on the Subject of His Excellency's Plan of Native Government, October 1861, AJHR, 1862, E-2, pp.10-12, [docs, vol.12, pp.3970-3972].

[457] William Fox, minute by Ministers, 31 October 1861, AJHR, 1862, E-2, p.15, [docs, vol.12, p.3975].

[458] Grey, note on Ministers' minute of 31 October 1861, AJHR, 1862, E-2, p.16; Fox, minute by Ministers, 4 November 1861, AJHR, 1862, E-2, p.16, [docs, vol.12, p.3976].

> asked what was the state of affairs in their country, he was told that there were quarrels in this place and in that place and runangas set up in this place and in that place, all making various laws. He proposed to make use of all these existing institutions but to put them into a new and better condition. Therefore people must be appointed from amongst themselves to take charge of these runangas, and in each village there must be native constables, acting under the people chosen from the runangas, to execute the laws. The people from these runangas must be sent to a central runanga – that is to a large runanga established for a large district of country. This principal runanga would make laws for many things; for example it would have to provide for all questions about the boundaries and ownership of lands, and for all cases of cattle trespass, and would make laws about fencing. These laws when made and assented to by the government would have to be carried into execution by their own officers.[459]

The governor added that those appointed to undertake this work would be well paid and would be expected to do their work well. As northern Māori had assisted him to make peace, Grey commented, he now expected them to 'assist him in that which was for the good of all'. He had 'undergone troubles & labours and left other friends in order to make them rich and happy and he demanded their assistance that they might be governed by laws assented to and worked out by themselves'. Asked what the duties of the District Rūnanga would be, the governor explained that it would have to make laws for the whole district:

> For instance in the matter of roads it would have to decide whether roads should be made and if so between what places they would be most advantageous. He lived in Auckland and could not tell where roads were required, the runanga would be his eyes to see where a road was wanted, his ears to hear what people asked for it, and his hands to construct it. The runanga would moreover have to provide for the building of gaols and hospitals, & determine on what terms medical assistance should be

[459] Memorandum of Sir George Grey's address at Kororareka, 6 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, pp.1885-1886].

> afforded...In short the runanga would be the governor's eyes and ears and hands for that place.[460]

Although those present at the Kororareka hui reportedly expressed 'great satisfaction' at Grey's explanation of his proposed rūnanga system, some significant concerns were also raised.[461] Doubts were expressed, for example, as to whether it would be found possible to execute the law in cases where the offending party was a great chief. Grey replied that if any salaried officer did wrong the matter would be brought before the rūnanga at its next meeting, and the governor would receive a full report on proceedings. The potential loss of salary would provide a strong incentive to carry out the law, even against great chiefs, and over time the constables 'from constantly acting together would become a "hapu" and would help each other fast enough'.[462]

Yet while Grey's primary concern was to secure support for his scheme of 'new institutions', the speeches of northern leaders at Kororareka reflected an altogether different priority. They continued to seek further settlement of their district as a means of reviving their economic fortunes. Pukututu, for example, told Grey:

> I will ask you for the things which I have asked you for before. Give me plenty of Pakehas, and also some officers. I gave the Kawakawa in order that it should be occupied by Europeans. Send me some Pakehas to be my friends. I now say to you, shew your love for me by giving me Pakehas, and do so quickly before I die, that I may see your Pakehas. Friend, Governor Grey, give me Pakehas.
>
> Ka tono atu ahau ki a koe ko nga tono o mua. Homai he Pakeha ki au kia tini me etahi Apiha ano hoki. I tukua atu ai e ahau te Kawakawa, he mea kia nohoia e te Pakeha. Tukua mai etahi Pakeha hei hoa moku. Ka mea atu nei

[460] Memorandum of Sir George Grey's address at Kororareka, 6 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, p.1887].

[461] *New Zealander*, 16 November 1861, [docs, vol.21, p.7050].

[462] Memorandum of Sir George Grey's address at Kororareka, 6 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, p.1888].

> ahau ki a koe; ko to aroha tenei ki au, ko etahi Pakeha, tukua mai e koe ki au: hohorotia mai kei wha mate ahau, kia kite ai ahau i o Pakeha. E hoa, e Kawana Kerei, homai e koe he Pakeha maku.[463]

Raharuhi Te Onui requested that the governor should '[m]ake Okaihau fat with cattle, sheep and all sorts of Pakeha animals' ('Whakamomonatia Okaihau ki te kau, ki te hipi, ki nga kuri katoa a te Pakeha'), while others asked that they should have a township on their lands.[464] Grey replied that:

> A great many Maories who had addressed him had desired to have Europeans brought into their own neighbourhood, he had no objection to the two races being linked together, if they themselves desired it. If they asked for European settlers, arrangements would be made for their introduction.[465]

But at a large hui held at Kerikeri the following day, Grey was pointedly reminded of the promise made by his predecessor that a township would be established there and the request made that he should fulfil this pledge. In fact, the hui opened with a letter addressed from 'nga Rangatira o Ngapuhi' being read aloud before the governor:

> Respect the word of your friend Governor Browne, and carry it out now at once. Do not delay O Governor to establish a town here: the land has been surveyed, and we are only waiting for the word. Give us Pakehas; give us wealth; give us employment, and let the kind law of the Queen unite the two races.
>
> Manaakitia e koe nga kupu a tou hoa a Kawana Paraone; mau e whakamana aianei pu ano. Kaua, e pa e Kawana, e waiho kia roa, kia whakanohoia e koe he Taone ki konei. Kua oti te ruri nga pihi whenua e takoto nei; heoi, he tatari

[463] Speeches of the Ngapuhi Chiefs to Governor Grey at the Meeting at Kororareka, *Te Karere Maori*, 15 January 1862, [docs, vol.18, p.6145].

[464] Speeches of the Ngapuhi Chiefs to Governor Grey at the Meeting at Kororareka, *Te Karere Maori*, 15 January 1862, [docs, vol.18, pp.6147-6148].

[465] Memorandum of Sir George Grey's address at Kororareka, 6 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, p.1886].

> kau atu ta matou ki te kupu. Homai he Pakeha, homai he taonga, homai he mahi; ara, ma te Ture atawhai o te Kuini e whakakotahi nga Iwi e rua.[466]

A separate letter from Te Hikuwai and other chiefs also requested that a township should be established on the site at Kerikeri surveyed by the sanction of Browne for these purposes.[467] Wi Hau also directly reminded Grey of the promise:

> Governor Browne proposed to establish townships so that the Pakehas and Maories could live together. The pieces of land have been surveyed, and we are waiting for the fulfilment of his word; there is perhaps some error, for we have performed our promise, whereas his is not yet performed. Do you agree to Governor Browne's word.
>
> I mea a Kawana Paraone kia mahia nga Taone kia noho kotahi ai te Maori, te Pakeha: kua oti te ruri nga pihi whenua, a e tatari ana matou kia puta te tika o ana kupu. Kua he pea, no te mea, ko ta matou kua oti, ko tana kihai i te oti. Mau e whakaae te kupu a Kawana Paraone.[468]

Despite comparing himself with a doctor who had come to hear their ailments and 'prescribe remedies', Grey refused to be drawn on the specific request that he honour the promise made by his predecessor, instead claiming that his new rūnanga system would provide for all of the wants of northern Māori, including the establishment of townships:

> I live far away in Auckland, I want to leave here eyes to see, ears to hear, hands to provide for, and mouths to tell your wants. Some of you want a town;

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[466] Speeches of Maori Chiefs to Governor Grey at the Kerikeri, *Te Karere Maori*, 15 January 1862, [docs, vol.18, p.6150]. Paragraph breaks in the Māori text have been collapsed. The original letter, including the list of signatories, can be found in MA 1 1861/154, Arch-NZ, [docs, vol.6, pp.1928-1931].

[467] Speeches of Maori Chiefs to Governor Grey at the Kerikeri, *Te Karere Maori*, 15 January 1862, [docs, vol.18, pp.6150-6151]. The original letter is also in MA 1 1861/154, Arch-NZ, [docs, vol.6, p.1932].

[468] Speeches of Maori Chiefs to Governor Grey at the Kerikeri, *Te Karere Maori*, 15 January 1862, [docs, vol.18, p.6152].

> some, roads; some, Europeans to live with you. How can I know these things, unless there is someone here to represent me. The runanga would provide for all these wants.[469]

In response to a specific query, Grey added that 'if they wanted schools the runanga would provide them'. Jails, hospitals and other institutions would also be provided for their benefit and '[b]y the establishment of runangas and courts and by the introduction of magistrates and medical men, Europeans would be induced to settle in the country'.[470]

It was a clever way of dodging responsibility for establishing the promised townships in the north. Essentially, Grey placed the onus back onto northern Māori to subscribe to and actively support his proposals for indirect rule through state-sanctioned rūnanga as the cost of gaining the townships so desperately desired by the tribes. Yet as Wi Hau had noted, Māori had already fulfilled their part of the bargain by agreeing to provide lands for the proposed settlements. Grey, at his slippery best, had shifted the goalposts significantly.

It was a similar story at Okura, in the Hokianga district, where a crowd of more than 1500 had gathered to greet the governor on 12 November 1861.[471] Grey explained that the rūnanga would be fully empowered to investigate land disputes, and its decisions would be final; even the governor, he noted, would be in the same position as any other chief, and would be bound by the decision of the rūnanga whether favourable to him or not. When the rūnanga was established there would no longer be 'any fear of wrongs and disputes between natives and Europeans, the government would therefore no longer keep Europeans out of the Hokianga district but would encourage

[469] Memorandum of conversation between Sir George Grey and Māori assembled at Kerikeri, 7 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, p.1890].

[470] Memorandum of conversation between Sir George Grey and Māori assembled at Kerikeri, 7 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, p.1890].

[471] *Southern Cross*, 19 November 1861, [docs, vol.20, p.6658].

settlement'.[472] Responding to the 'great anxiety for a town...expressed by many of those present', the governor declared that:

> a town would necessarily spring up in the Hokianga district. Every member of the runanga would have a house there and there would be the doctor and the schoolmaster. All these persons would have wants and Europeans would come and set up "stores" to supply those wants. A town was made by people congregating together to supply the wants of those who had money to spend. The unsettled state of the Waikato would not in any way delay the establishment of a town...He promised to do his best to have everything he had mentioned put into immediate execution and he called upon them to say with one voice that they would do their best to carry these things into effect.[473]

Grey's request was met with 'loud and repeated cries of:– "Yes! Yes!"'. As the *New Zealander* concluded in commenting on the governor's tour of the north, Māori there were 'greatly pleased' with his plans for government through rūnanga, but were equally 'loud in their petitions for Europeans to be sent into the district, and for townships to be created'.[474] By effectively linking support for the rūnanga scheme with the establishment of townships the governor thus managed to secure the agreement he sought for his proposals. He had done so, however, only at the cost of greatly heightening expectations among northern Māori as to the benefits the scheme might be expected to bring them. And as Crown officials quickly lost interest in the rūnanga system, such expectations were to be generally disappointed.

### 4.7 New Institutions in the North

Grey had promised northern Māori that implementation of his proposals would be swift provided support for them was forthcoming. And, indeed, the rūnanga scheme

[472] Address of Sir George Grey to Māori assembled at Okura, Herd's Point, 12 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, pp.1896-1897].

[473] Address of Sir George Grey to Māori assembled at Okura, Herd's Point, 12 November 1861, MA 1 1861/150, Arch-NZ, [docs, vol.6, pp.1897-1898].

[474] *New Zealander*, 16 November 1861, [docs, vol.21, p.7050].

got off to a hiss and a roar in the north. The governor reported to the Secretary of State for the Colonies in December 1861 that his visit to the north had been 'in all respects a successful one' and that he was hopeful that within the space of two months 'nearly the whole of the Natives of that part of the country which lies between Auckland and the North Cape...will be in possession and exercise of a complete system of local self-government which will quite meet their wants'. Their example would, he added, 'exercise much influence over the other parts of the Island'.[475] In fact, even before Grey left the north, George Clarke Snr. had been appointed Civil Commissioner for the Bay of Islands District, with instructions to prepare a list of those best qualified to serve as Assessors, and to 'make such arrangements as you can for giving validity to the local runangas now in existence and preparing the way for the assembly of the district Runanga as early as circumstances will justify'.[476] At the same time Edward Williams was appointed Resident Magistrate for the Hundred of Kerikeri, whilst the Hokianga Resident Magistrate, James Clendon, was informed that he would now report to Clarke.[477] White, who received the same instructions a short while later, successfully challenged such arrangements, and in February 1862 Mangonui was reconstituted as a separate district under the Native Districts Regulations Act of 1858.[478]

Clarke recommended that the Bay of Islands district should 'embrace the whole of the Ngapuhi country', extending from Whangarei in the south, across to Mangakahia and up to the South Head of Hokianga, 'continuing up that river as far as Motu Karaka, from thence to Maungataniwha; from thence in a line North-east to the North Head of Wangaroa', with all of the territory to the north of this constituting the separate Mangonui district.[479] In fact, when the districts were proclaimed in January 1862 the boundary between the Bay of Islands and Mangonui was shifted north to Herekino on

[475] Grey to Newcastle, 6 December 1861, AJHR, 1862, E-1, Sec.II, p.42, [docs, vol.24, p.8166].

[476] William Fox, Acting Native Minister, to Clarke, 9 November 1861, MA 4/4, Arch-NZ, [docs, vol.4, p.1464].

[477] Fox to E.M. Williams, 10 November 1861, MA 4/4, Arch-NZ, [docs, vol.4, p.1465]; Fox to Clendon, 9 November 1861, MA 4/4, Arch-NZ, [docs, vol.4, p.1463].

[478] O'Malley and Robertson, pp.25-26.

[479] Clarke to Native Minister, 30 December 1861, AJHR, 1862, E-9, Sec.I, p.3, [docs, vol.12, p.4062]; Clarke to Native Minister, 14 December 1861, AJHR, E-9, Sec.VII, p.3, [docs, vol.12, p.4077].

the west coast and moved south on the opposite coast to the South Head of Whangaroa Harbour, meaning some Hokianga Te Rarawa were included in the supposed 'Ngapuhi country', and Whangaroa Ngāpuhi were included in the Mangonui district.[480] Clarke proposed establishing just three Hundreds for the large Bay of Islands district, and although the southernmost one, Whangaruru, extended south as far as Whangarei, his list of members for the District Rūnanga, forwarded to the Native Minister in December 1861 included just one member for the Hundred, the rehabilitated Maihi Paraone Kawiti.[481]

Yet although Clarke claimed that the divisions proposed 'have from time immemorial been those of the Natives', Wiremu Tana Papahia, the principal chief of Te Rarawa at Hokianga, who found himself on the Bay of Islands District Rūnanga, later complained that 'it was not only his, but the wish of the people generally that the [Te Rarawa] tribe should be united, and not divided as under the present arrangement'.[482] Clendon, meanwhile, reported from Hokianga in April 1862 that 'many of the influential Chiefs of this hundred complain that several tribes are not represented at the District Runanga and have no assessors in their neighbourhood'.[483] Clendon also noted that two chiefs at Whangape, 'where there is neither a representative at the District Runanga nor an Assessor have resolved to govern themselves by their own laws', a determination which he felt persuaded had 'originated from their having been overlooked'. Ten months later the Hokianga Resident Magistrate was continuing to unsuccessfully urge the appointment of additional Assessors from the area along with further representation from among the Hokianga chiefs to an enlarged District Rūnanga. Such steps would, he believed, 'tend to secure their influence and attachment to the Government and lead them to abolish their own self constituted runangas'.[484]

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[480] *Te Karere Maori*, 5 February 1862, [docs, vol.24, pp.8195-8197].

[481] Enclosure 1 – Chiefs of the District Runanga, in Clarke to Native Minister, 30 December 1861, AJHR, 1862, E-9, Sec.I, p.5, [docs, vol.12, p.4064].

[482] W.B. White to Native Secretary, 10 February 1863, BAFO A760/11, Arch-NZ (Akl), in O'Malley and Robertson, 'Muriwhenua Land and Politics', Supporting Documents, vol.6, pp.1459-1460.

[483] J.C. Clendon to Civil Commissioner, 4 April 1862, Hokianga [Resident Magistrate's] Letterbook, qMS-0473, ATL. [Unable to be copied].

[484] Clendon to Civil Commissioner, 5 February 1863, qMS-0473, ATL.

Clarke's divisions were, it would appear, less reflective of custom than he assumed, but had nevertheless been adopted by the government seemingly without any further consultation with local chiefs who may have been able to assist in the determination of appropriate boundaries. It was not a good start for a system which purported to offer northern Māori extensive powers in the management of their own affairs. In reality, it seemed, Crown officials remained in the driving seat. And even after sensible suggestions for improving the system were made by Clendon and others, there was little willingness shown to act on these in any significant way.

In fact, when the Bay of Islands District Rūnanga met for the first time before a crowd numbering upwards of 500 (including many local settlers) in March 1862 Clarke fielded almost immediate complaints as to the impossibility of representing all hapū interests within a body limited to just 12 members. When Clarke declared that they were able to nominate two further members, he was informed in response by the Rūnanga 'that there ought to be ten instead of two'.[485] Wiremu Tana Papahia, the Te Rarawa chief, was then nominated for inclusion, along with an associate of Waka Nene's, who had threatened to vacate his own seat if that was the only way to secure the inclusion of his friend. Clarke noted that if the government was unwilling to admit a larger number than 12, then 'more useful and influential men' would be excluded from the Rūnanga by this act; but at the same time the government could not afford to lose Waka and his influence. Complicating matters further, Kawiti then put forward a 'friend and neighbour' of his own for inclusion, and despite Clarke's reminder that they were limited to 12, the Rūnanga approved his nomination.

The Civil Commissioner believed that the only way to prevent 'future embarrassment' of this kind would be to insist that the Rūnanga find the means of paying for any further members they might wish to appoint (who should be accorded 'honorary' membership only by the government). At the same time, he recommended that the membership be increased to 15, given that the whole of the coastline from Russell to Tutukaka was entirely unrepresented in the existing membership and had been

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[485] Clarke to Native Minister, 5 April 1862, AJHR, 1862, E-9, Sec.I, p.8, [docs, vol.12, p.4067].

'greatly neglected' in the existing arrangements.[486] This does not appear to have been approved, however, and when the District Rūnanga met again in March 1863 just 12 members were present.[487]

Beyond lengthy wrangling over the respective salaries paid by the government under its scheme of 'new institutions', the first session of the District Rūnanga also, at Clarke's urging, passed a number of resolutions, pledging themselves to bring an end to the institution of taua muru, and to henceforth resolve disputes in accordance with English law, along with others declaring their intention to resolve disputed land titles and to use all lawful means to stop the excessive consumption of 'ardent spirits'.[488] Meanwhile, consideration of other issues, such as provision for education and medical aid, was deferred to the subsequent meeting.

Yet although the Bay of Islands District Rūnanga continued to meet and usefully debate and pass resolutions on matters of local concern over the next few years, only one of its regulations, tightening the restrictions against consumption of spirits, was ever approved by the Governor-in-Council and given the force of law.[489] Grey had himself urged the Rūnanga to pass such a resolution, which, despite the requests of northern leaders a few years earlier to end such 'exceptional laws', its members reluctantly agreed to do.[490]

Despite Grey's promises when he visited the north in November 1861 that extensive powers and resources would be devolved to the District Rūnanga, the Crown was never interested in allowing these to develop into state-sanctioned instruments of

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[486] Clarke to Native Minister, 5 April 1862, AJHR, 1862, E-9, Sec.I, p.9, [docs, vol.12, p.4068].

[487] Proceedings of the Third Session [sic] of the Bay of Islands District Runanga, Waimate, 3 March 1863, MS 1591, Auckland War Memorial Museum Library (AWMML), in Armstrong Supporting Documents, Sec.1, p.205. [Note: This was in fact only the second session of the Bay of Islands District Rūnanga].

[488] Address of the President to the Bay of Islands District Runanga, AJHR, 1862, E-9, Sec.I, p.12, [docs, vol.12, p.4071].

[489] O'Malley, 'Runanga and Komiti', p.51.

[490] Ward, *Show of Justice*, p.144.

genuine self-government.[491] Just as with earlier proposals, indirect rule through the chiefs remained the government's primary concern, whilst it was also hoped that through their role in the suppression of 'injurious Native customs', the Rūnanga could also serve as agents of assimilation.[492] As William Fox informed the General Assembly in July 1862, the government did not perceive many alternatives to indirect rule via the rūnanga:

> We look to the runanga, or Native council, as the *point d'appui* to which to attach the machinery of self-government, and by which to connect them with our own institutions...We have no choice but to use it, it exists as a fact, it is part of the very existence of the Maori – we can nor more put it down than we can stay the advancing waves of the rising tide; and, if we do not use it for good purposes, it will assuredly be used against us for bad.[493]

With unofficial rūnanga already in existence across many Māori communities, including in the north,[494] the Crown sought to co-opt and control such bodies for its own ends. Institutions perceived as a threat to the Crown might therefore accordingly be harnessed and utilised to further its own assimilationist goals. Mechanisms of self-government could, it was hoped, thus be turned into instruments of indirect rule.

Clarke in fact informed the Bay of Islands Resident Magistrate in September 1862 that a principal object of his periodical visits to the different settlements within his area would be that of:

> controling [sic] when you cannot wholly suppress the many self constituted Runanga's [sic]; unless they are kept in a great measure under your direction, they will be a source of endless confusion, if not a complete nuisance they will be resorted to in opposition to your Court, and being governed by self interest,

[491] O'Malley, 'Runanga and Komiti', p.57.

[492] ibid., pp.53-59.

[493] 22 July 1862, NZPD, 1861-1863, p.422, cited in Vincent O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century*, Wellington: Huia Publishers, 1998, p.25.

[494] Clendon to Native Secretary, 2 October 1861, AJHR, 1862, E-7, p.17, [docs, vol.12, p.4053].

> partiality and covetiousness [sic], these acts would be Tyrannical, arbitrary and unjust, and even in cases where offences may have been given, and in Justice some reparation should be made, their demands, will be found so unreasonably exessive [sic], subjecting the offender to greater inconvenience than the Native Taua's [sic] It will therefore be your duty, to remind all such self constituted Runanga's [sic].
>
> 1stly That self constituted Runanga's [sic] claiming any Judicial or executive functions are illegal.
> 2ly That there can be no legal Runanga but such as is constituted by the Government.
> 3ly That where Runanga's [sic] are duly constituted by the Government their powers are very limited, and in order to give validity to any thing they do, it must be through the Magistrates and Assessors.[495]

Clarke added that '[t]he Runanga's [sic] cannot be altogether suppressed, but may be brought under regulations which will render them useful as well as harmless'.

Yet what were frequently viewed by European observers such as Clarke as 'exorbitant' or excessive punishments handed down by unofficial rūnanga for 'trivial' offences were often viewed by Māori themselves quite differently. Rūnanga frequently handed down penalties tailored to the circumstances of the offender, rather than those of the actual crime committed – a notion which sat comfortably with Māori concepts of utu and muru but less so with mid-Victorian ideas about crime and punishment. Some chiefs readily accepted large fines levied by rūnanga against them as a mark of their own significance, whilst crimes considered minor in Pākehā society, such as verbal curses, caused huge disruption within Māori communities and were accordingly treated seriously by the rūnanga.[496] Clarke informed the Resident Magistrate that he would be required to intervene in many cases 'which are weighty in the estimation of the Natives but which officially you could scarcely notice'. Such

[495] Clarke to the Bay of Islands Resident Magistrate, 1 September 1862, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.12-13, [docs, vol.11, pp.3575-3576].

[496] O'Malley, 'Runanga and Komiti', p.53.

matters as curses, breach of tapu, abductions and other causes of dispute within Māori communities could only be dealt with officially (that is in accordance with English law) at the cost of undermining the standing of the courts, Clarke advised, but at the same time could not be ignored altogether, 'for if once the Natives believe, that you are unable to help them out of their difficulties, your influence will be lessened, and it would probably lead them to adopt some Native mode of redress'.[497] The only solution to this dilemma was to deal with such disputes, however seemingly trivial, in an unofficial way, trusting to time and greater Māori knowledge and acceptance of English laws to eventually 'correct' their confused notions on these matters. As the Civil Commissioner later informed his magistrates, if 'respect for Law and order' could be inculcated in Māori communities 'an end to all irregular and inconvenient modes of settling Native disputes and disturbances' could eventually be expected provided the co-operation of the chiefs was forthcoming.[498]

The only problem with this view was that the northern chiefs and their communities were not prepared to be duped into enforcing English laws against themselves. Indirect rule may have been the Crown's goal, but it was not one shared by Māori. Instead, those northern communities who supported the rūnanga system tended to see it as providing belated Crown recognition of their customary authority and an opportunity to enforce their own customary laws with the support of the Crown.[499] As Ward notes, chiefs who voted in favour of resolutions at District Rūnanga 'could and did, act quite contrary to the rulings they had just joined in passing' once they returned to their own communities'.[500] Clarke and other officials frequently complained of the Assessors 'presuming upon powers quite beyond their Jurisdictions' and of making inappropriate or incorrect decisions.[501] Yet although they

[497] Clarke to the Bay of Islands Resident Magistrate, 1 September 1862, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.11-12, [docs, vol.11, pp.3574-3575].

[498] Clarke to the Magistrates of the Bay of Islands District, December 1862, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.18-19, [docs, vol.11, pp.3581-3582].

[499] O'Malley, 'Runanga and Komiti', p.53.

[500] Ward, *Show of Justice*, p.138.

[501] Clarke to the Bay of Islands Resident Magistrate, 1 September 1862, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, p.11, [docs, vol.11, p.3574].

may not have been in accordance with English laws, the determinations of the chiefs/Assessors (which were often, in fact, made by unofficial rūnanga) were often more reflective of tikanga Māori.

The Crown may have expected to appropriate Māori institutions such as unofficial rūnanga for its own ends, but with Clarke and other officials forced to recognise breaches of tapu and other matters as offences in order to maintain any kind of influence with the tribes, there was much to suggest that Northland Māori had in fact reappropriated the state-sanctioned bodies for their own, rather different purposes. Grey had boldly informed northern Māori in 1861 that even their chiefs would be subject to arrest, and duly punished like everyone else. But when push came to shove, the reality in a district which continued to be dominated and governed by Māori proved rather different. In 1864, for example, a young chief of high standing shot and wounded another man in an adultery dispute at Te Ti, in the Bay of Islands. Yet efforts to arrest the chief had to be abandoned when the extent of Māori opposition to such a course of action became clear. Clarke was instead forced to treat the matter as a civil case, to be settled by way of a fine, in order to avoid further exposing the Crown's fundamental weakness in the north.[502]

If the 'loyalty' of those in 'Ngapuhi country', as Clarke had described it, was considered somewhat fragile or suspect, further north Crown officials entertained few doubts as to the steady attachment of local Māori (with the notable exception of Ngāpuhi living at Whangaroa, who were considered latent sympathisers towards – and potentially active supporters of – the Kingitanga).[503] Yet the resident tribes of the far north proved no more willing to enforce English laws over tikanga Māori than had those of the Bay of Islands district. W.B. White convened the first meeting of the Mangonui District Rūnanga in July 1862. As with the earlier meeting at Waimate, a large crowd, again numbering upwards of 500 and including many local settlers, were

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[502] Clarke to E.M. Williams, 1 July 1864, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.40-41, [docs, vol.11, pp.3604-3605].

[503] Clendon to Native Secretary, 2 October 1861, AJHR, 1862, E-7, pp.16-17, [docs, vol.12, pp.4052-4053].

in attendance.[504] White noted that 'anything like exclusion of the people would have created a strong prejudice against the objects of the Runanga' in subsequently submitting a large bill for expenses incurred in providing for all those in attendance.[505] Seven sub-districts had been established and one member from each elected to join the District Rūnanga, but the other Assessors were also permitted to join in as non-voting members to avert any difficulties which might arise from their exclusion.[506]

Although the Native Minister subsequently endorsed White's positive report on the inaugural meeting, not everyone was quite so happy with the work of the Mangonui District Rūnanga. A by-law on the perpetually troublesome issue of fencing and cattle trespass (which had in fact been drafted by White himself) prompted the *Aucklander* to declare with dread that 'it only wants the Governor's approval to subject Europeans settled in that district to Maori law administered by Maoris'.[507] But despite reassurances that the governor would be advised to proclaim this and another draft by-law concerning the gathering of census information under the Native Districts Regulation Act of 1858,[508] no steps were taken to give effect to either by-law (or indeed to any other resolution passed by the Mangonui District Rūnanga).[509]

White's own objections to 'exceptional Laws…for the Natives' were increasingly beginning to undermine initial enthusiasm for the District Rūnanga on the part of local Māori.[510] A further, largely-attended meeting of the Rūnanga was held in January 1863 at which the provision of schooling was hotly debated and a

[504] *New Zealander*, 20 August 1862, [docs, vol.21, p.7078].

[505] White [to Native Minister], 22 August 1862, BAFO A760/11, p.184, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, p.1416.

[506] White [to Native Minister], 20 August 1862, BAFO A760/11, pp.179-180, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, pp.1411-1412.

[507] *Aucklander*, 7 October 1862, cited in Ward, *Show of Justice*, p.148.

[508] Acting Native Secretary to White, 18 November 1862, BAFO A760/11, p.204, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, p.1436.

[509] O'Malley, 'Runanga and Komiti', p.55.

[510] White to Native Secretary, 18 February 1861, BAFO A760/11, pp.45-46, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, pp.1277-1278.

commencement made to resolving land disputes in the district.[511] But by the following year White's actions in attempting to prevent the payment of four horses to the aggrieved party in a pūremu dispute, as awarded by two Assessors, had prompted efforts to establish a 'Runanga Kei Waho', or outside rūnanga, 'in opposition to the authority of the Magistrates'.[512] White reported that 'the outside Runanga as explained by one of the Assessors, means a desire to return to the old Maori Law. Being habitual breakers of the law, they do not like the restraints of the European Law.'[513]

It was, though, White's own actions in insisting that any fine be paid to the Court, with damages to the aggrieved party subsequently dependent on proof of their own good character, which had breached established Māori protocols for dealing with such matters and angered the chiefs. A more general disillusionment with the official rūnanga system subsequently appears to have spread. One member of the District Rūnanga openly declared his intention of 'not upholding the law with reference to the punishment of theft, and selling spirits to the Natives', and was dismissed from office, while the two Assessors involved in the pūremu dispute were suspended and the remaining members of the District Rūnanga censured 'for their want of energy' in administering justice in the district.[514] White again had cause to deprecate 'irregularities' in the conduct of the Assessors at a further meeting of the District Rūnanga in March 1865 but added that he 'did not consider it necessary to invite the Runanga to pass resolutions as to the government of the district, as I wish to lead them to accept the laws in force amongst the Europeans'.[515]

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[511] White to Native Secretary, 27 February 1863, BAFO A760/11, pp.233-236, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, pp.1465-1468.

[512] White to Native Minister, 11 April 1864, BAFO A760/11, p.470, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, p.1703.

[513] White to Native Secretary, 2 May 1864, BAFO A760/11, p.305, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, p.1538. Emphasis in original.

[514] E. Shortland to White, 5 May 1864, BAFO A760/11, pp.308-309, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, pp.1541-1542.

[515] White to Native Minister, 5 May 1865, BAFO A760/11, p.360, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, p.1593.

In the wake of the Waikato War White's views were entirely in conformity with those of his political masters. At the end of 1865 the last vestiges of the official rūnanga system were formally abolished and White was informed that 'true policy requires that all exceptional law should gradually cease and the Natives be encouraged to conform to that of the European'.[516] Although some positions created under the system were retained, these were incorporated into the now depleted Resident Magistrate framework of machinery governing Māori. According to Ward, approximately two-thirds of the 450 salaried Māori office-holders under the 'New Institutions' either had their salaries stopped altogether or severely cut.[517] White, demoted to his former position as Mangonui Resident Magistrate with the abolition of the office of Civil Commissioner, notified the Native Minister that he intended to continue to convene the now unofficial District Rūnanga once a year as it was 'a great advantage to the Government in a political sense', but there is no further record of any such meetings.[518]

Although Kingitanga supporters elsewhere had rejected the 'new institutions', considering the whole scheme little more than a thinly-veiled bribe to buy their support for the Crown, in the north most groups embraced the system with enthusiasm. Their response was no doubt influenced heavily by the face-to-face explanations of Governor Grey during his November 1861 visit to the north. The rūnanga system, Grey had suggested, was the key to a prosperous future ahead for Northland Māori. Even the establishment of their long-awaited townships, the governor declared, would rest with the rūnanga. But with the failure of the scheme to undermine support for the Kingitanga elsewhere, Crown officials rapidly lost interest in the 'new institutions', and devoted their energies instead to planning for the forthcoming war.

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[516] W. Rolleston, Native Under-Secretary, to White, 8 December 1865, BAFO A760/11, p.431, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, p.1664.

[517] Ward, *Show of Justice*, p.196. Clarke's position as Civil Commissioner for the Waimate district was one of many to be abolished, effective from 31 December 1865. Rolleston to Resident Magistrate, Kororareka, 2 December 1865, BAVX 4817/24e, Arch-NZ (Akl), [docs, vol.23, p.7627].

[518] White to Native Minister, 27 February 1866, BAFO A760/11, p.445, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.7, p.1678.

In 1863 Tamati Waka Nene and others had implored the governor to 'turn your eyes towards the North, to the people of the Government' ('huri mai o kanohi ki te taha ki raro nei, ki te iwi ano nana te Kawanatanga').[519] But Grey's eyes were firmly fixed on the Waikato. After a brief period of re-engagement with the north, motivated by the need to shore up 'attachment' for the Crown, officials now felt confident enough to neglect the area again. And as the promised prosperity and devolution of significant authority promised by Grey failed to materialise, support for the rūnanga system seemingly waned. The renewed alliance of 1858 had entered uncertain territory by the mid-1860s, even though northern Māori had already transacted significant areas of land with the Crown in expectation of the benefits promised to them in return.

[519] Nene and others to the governor, 8 June 1863, *Te Karere Maori*, 28 September 1863, [docs, vol.18, p.6159].

# 5. Overview of Northland Crown Purchases

## 5.1 Establishment of the Native Land Purchase Department

With the Protector of Aborigines relieved of primary responsibility for initiating and completing new purchases from the end of 1842, the task was instead allocated to the Surveyor General.[520] But while this system proved a huge success in the southern districts, where New Zealand Company funds (or rather money loaned to the Company by the Imperial government) was used to acquire large tracts of territory, in the north the results were much less impressive. Rigby notes, for example that whereas between 1840 and 1842 the Crown claimed to have purchased 44,300 acres in what later became the province of New Ulster, the corresponding figure for the 1846 to 1849 period increased only very modestly to 49,159 acres.[521] Grey's strategy for acquiring Māori 'waste lands' at nominal prices may have brought about almost immediate results in the South Island, but further north there was scarcely any impact felt at first. And although transactions at Hawke's Bay and elsewhere after 1851 began to reverse this trend, a further influx of settlers into the province as economic conditions began to improve placed heavy pressure on the Crown to acquire further lands.

The new settlers had been attracted in part by Grey's March 1853 regulations, which halved the price of lands purchased from the Crown from £1 per acre to just ten shillings (or five shillings in the case of inferior lands).[522] Within little over a year over 300,000 acres had been purchased from the Crown – more than the total for the previous six years combined – which in turn placed renewed pressure on the Crown to supply the demand for yet more lands.[523] And with much of the southern district already purchased from Māori or under negotiation, the focus increasingly shifted to

[520] William Connell (for Colonial Secretary) to Chief Protector of Aborigines, 29 December 1842, *Epitome*, C, p.152.

[521] Rigby, 'The Crown, Maori, and Mahurangi', p.103.

[522] Taylor, *Te Ika a Maui*, pp.262-263; Thomson, vol.2, p.198.

[523] Thomson, vol.2, p.199.

the northern half of the North Island. New Ulster, or the province of Auckland as it became after 1853, became the new target for expanded land purchase operations.

In June 1853 Donald McLean – already recognised as the Crown's most capable and successful land purchase agent – urged the establishment of a Land Purchase Department so that 'under a steady and well-regulated system of negotiation, the whole country could be acquired at a comparatively moderate outlay'. McLean had cleverly pitched his proposal on the need to ensure that the successful system of land purchasing established under Grey was placed on a permanent footing prior to the governor's departure. His great fear, McLean told Grey, was that 'your successor may not enter into the spirit or nature of these engagements'.[524] Grey, in turn, responded to a May 1853 address presented to him by the inhabitants of Auckland in which they expressed their satisfaction with his recent land regulations, by informing its authors that he would:

> in compliance with your wishes make every effort in my power to induce the Natives to part with large districts of country in this portion of New Zealand, which may be thrown open to intending purchasers under the recent Land Regulations.
>
> With this object in view I will instruct the Commissioner Mr. McLean immediately to repair to Auckland, and to endeavour to complete such purchases, and I will personally lend that officer every assistance in this duty which my influence over the Native Chiefs, and my experience with the country, and with their habits, may enable me to afford him. For I feel that since I have succeeded in the South of New Zealand, in having such large districts of country secured for the settlers, you have a right to expect that my time and attention should now be devoted to an effort to secure similar advantages for yourselves.[525]

[524] McLean [to Grey], n.d. [c.29 June 1853], McLean Journal (typescript), vol.4, MS-1287, ATL, [docs, vol.24, p.8362].

[525] Reply to an address presented by the inhabitants of Auckland expressing their satisfaction with the new Land Regulations, 23 May 1853, Letterbook of FitzRoy and Grey, 1845-1853, NZMS 227, vol.3, ACL, [docs, vol.11, pp.3476-3477].

By the time that Grey had departed from New Zealand at the end of 1853 no Land Purchase Department had been formally established. However, in April 1854 McLean was effectively placed in charge of land purchase operations and again instructed to commence the acquisition of extensive tracts of territory within Auckland province as a matter of the highest priority. McLean was informed by the Colonial Secretary that:

> as you have arrived in Auckland, where your services have been long and urgently required, the officer administering the Government requests that you will make this your heard quarters till such time as you can effect the purchase of land in sufficient quantities to meet the probable requirements of this settlement for some years to come; or at least until this Province is in as favourable a position in this respect as the other Provinces of the Colony.[526]

The commissioner was further instructed that 'all the lands north of the Waikato' were to receive his particular attention. To enable McLean to carry out these instructions, the Colonial Secretary added, 'the whole management of the purchasing of lands from the Natives will be transferred from the Surveyor General to you', H.T. Kemp and J.G. Johnson would be directed to place themselves under his orders and an office recently occupied by the Commissioner of Crown Lands would be made available to him.[527]

Just a few months later, in June 1854, McLean urged that land purchasing operations be placed on a more regular and comprehensive footing, noting that:

> While the demand for land was comparatively limited it might have sufficed to purchase merely what was required for immediate settlement, but it is found that something more is urgently required to provide for the influx of immigration and wealth that may be expected to these Islands, and that a system of purchasing which provides only for the exigency of the moment is

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[526] Andrew Sinclair (Colonial Secretary) to McLean, 26 April 1854, Le 1/1856/200, Arch-NZ, [docs, vol.5, pp.1768-1769].

[527] Sinclair to McLean, 26 April 1854, Le 1/1856/200, Arch-NZ, [docs, vol.5, pp.1769-1771].

> not sufficient to promote on an extended scale, the great objects of colonization.[528]

Assuming the North Island to contain 28 million acres of land, McLean pointed out that no more than four and a half million of this had been acquired from Māori, notwithstanding the various endeavours of Crown and private parties to purchase more. The 'complicated nature' of claims to the land from the 'numerous tribes' inhabiting the North Island, 'their jealousies of each other, their superstitious objections to the alienation of the lands of their ancestors', and doubts that they could repurchase lands once sold (partially removed, he considered, by Grey's March 1853 regulations enabling Māori to buy back lands from the Crown), had made purchasing 'a matter of considerable difficulty'.[529] In order to meet these difficulties, McLean added:

> officers should be appointed to certain districts, whose duty should be to acquire a knowledge of the Native tribes of their district, to ascertain the extent and nature of their claims, and to give their undivided energy and attention to the purchase of land, not only to meet the present requirements of the country, but to prepare their districts, as far as they possibly can, for the introduction of European settlers.[530]

It was not just a case of acquiring land for the settlers, whether present or future. McLean believed that in purchasing lands from Māori the government was also effectively wresting control of the country from them:

> in the acquisition of every block of land, the Natives residing thereon, become virtually incorporated with the European Settlers, become amenable to English Law, and imperceptibly recognise the control of the Government in their various transactions.[531]

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[528] McLean, memorandum, 15 June 1854, Le 1/1854/106, Arch-NZ, [docs, vol.5, pp.1743-1744].

[529] McLean, memorandum, 15 June 1854, Le 1/1854/106, Arch-NZ, [docs, vol.5, pp.1744-1746].

[530] McLean, memorandum, 15 June 1854, Le 1/1854/106, Arch-NZ, [docs, vol.5, pp.1746-1747].

[531] McLean, memorandum, 15 June 1854, Le 1/1854/106, Arch-NZ, [docs, vol.5, p.1748].

There was, though, some urgency in this matter, according to McLean, since '[t]he longer the purchase of land is delayed, the more will be the expense and difficulty of acquiring it'. It was therefore necessary to organise an efficient department for these purposes, and provide it with ample funds 'so that whenever the Natives are prepared to sell their lands, there should be as little delay as possible in concluding arrangements with them for that purpose'. No other subject had 'embarrassed the Government in its dealings with the Natives, or retarded the progress of the Colony so much as the adjustment of the Native Land question', and the arrangements McLean outlined would, he believed, be the means of avoiding a repetition of such difficulties in the future and provide 'the means of opening up the country for steady and progressive colonization'.[532] An efficient staff of officers was therefore required to negotiate the purchase of lands from Māori, along with surveyors to mark off the external boundaries of the blocks acquired and the reserves required for Māori within such areas, to be overseen by a principal commissioner to instruct and direct the purchasing operations and to keep the government informed of the progress of negotiations and the sums required to fund such purchases.

The Native Land Purchase Department was accordingly placed on a formal footing, with McLean as Chief Land Commissioner, in 1854. These changes brought about immediate results, and in August 1855 McLean was able to report that approximately 600,000 acres of land had been purchased from Māori in various parts of Auckland province. Yet McLean reported at that time that 'owing to the increased demand for land arising from the numerous arrivals of immigrants (many of them possessed of wealth and energy) from Great Britain and the neighbouring colonies, a sufficiency of land has not yet been acquired, more especially in the Auckland Province, to meet this demand'.[533] Any check to the further acquisition of lands in Auckland province would be 'highly injurious to the present and prospective prosperity' of the colony, McLean warned, particularly since:

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[532] McLean, memorandum, 15 June 1854, Le 1/1854/106, Arch-NZ, [docs, vol.5, p.1749-1750].

[533] McLean to Colonial Secretary, 30 August 1855, *Epitome*, A.1, p.53.

> The natives regard the transfer of their land as an act of great national importance, and their pride is easily injured if advantage is not taken of their offer to dispose of it, more especially as they conceive, notwithstanding the many advantages they derive from doing so, that they have not till then entirely yielded their own independence, laws, and customs in exchange for the restraints which their elder men, with the jealousy natural to them, apprehend they must submit to by the introduction amongst them of English law and authority, which is generally as much respected in districts acquired from them as it is disregarded in many of the unpurchased portions of the country.[534]

It was, McLean submitted, 'better to use some exertion to provide funds without delay, while the land can be obtained on moderate terms, than to run the risk of not obtaining it at all; or, if eventually obtained, to be compelled to pay an enormously high price for it'. For these reasons, the Chief Land Commissioner urged the securing, by way of loan or otherwise, of a sum of not less than £50,000 per annum to enable the government to continue arrangements for the acquisition of sufficient quantities of land to satisfy the present and future needs of the colony.[535]

McLean did not secure the desired £50,000 per annum, and in fact a temporary halt was called to new purchases due to insufficient funds in September 1855.[536] But under the terms of the New Zealand Loan Act of 1856 the government agreed to raise a loan of £500,000 to fund various measures, of which £180,000 was allocated to land purchasing operations. Half of this latter sum (£90,000) was specifically devoted to land purchases within the Auckland province.[537] By 1865 the full amount had been

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[534] McLean to Colonial Secretary, 30 August 1855, *Epitome*, A.1, p.53.

[535] McLean to Colonial Secretary, 30 August 1855, *Epitome*, A.1, p.53.

[536] Sinclair to McLean, 26 September 1855, *Epitome*, C, p.162.

[537] These arrangements formed part of the broader 'compact of 1856'. See W.P. Morrell, *British Colonial Policy in the Mid-Victorian Age*, Oxford: Oxford University Press, 1969, p.216; B.J. Dalton, *War and Politics in New Zealand 1855-1870*, Sydney: Sydney University Press, 1967, pp.33-34; W. David McIntyre and W.J. Gardner (eds), *Speeches and Documents on New Zealand History*, Oxford: Oxford University Press, 1971, pp.99-105.

spent.[538] In the meanwhile, McLean's original staff of two had been deployed in the north – John Grant Johnson to Whangarei and Mahurangi, and Henry Tacy Kemp to the Bay of Islands and Whangaroa.

### 5.2 Mahurangi

John Grant Johnson, a surveyor and interpreter and the son of Dr John Johnson, who had been appointed colonial surgeon in February 1840, commenced operations in the north in February 1853, when he received instructions to proceed to Mahurangi to report on the nature and extent of Māori claims in the area.[539] All of the Mahurangi district had supposedly been purchased by the Crown in 1841, but the farcical nature of proceedings would result in 16 separate transactions for the same area of land over the period to 1865.[540]

On 14 April 1841 the Colonial Secretary, Willoughby Shortland, informed the Protector of Aborigines, George Clarke, with reference to a proposal forwarded by the latter two days earlier 'from the united tribes of the Thames to sell a tract of country in the vicinity of the Waitemata, known as "Mahurangi," to the Crown', that Hobson had sanctioned completion of the purchase on the terms mentioned.[541] Perhaps Clarke had already received verbal approval to proceed with the transaction, since the day before this the Chief Protector had in fact signed a deed with the 'Chiefs and people of Ngatipaoa Ngati Maru Ngatitamatera and Ngatiwhanaunga' to:

> cede and dispose of these places of ours (Mahurangi and Omaha) and the places lying within the boundaries described in this document to Mr. Clarke Protector of Aborigines on behalf of the Queen of England her heirs or some

[538] 'Return of Land Purchase Expenditure', AJHR, 1865, B-10, pp.1-3.

[539] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], MA 4/1, Arch-NZ, [docs, vol.4, pp.1248-1249]. The basis upon which I have concluded that this letter was mis-dated is discussed later in this section.

[540] Rigby, 'The Crown, Maori, and Mahurangi', Figure 3: Mahurangi-Mangawhai Crown purchases 1840-1865, pp.6-8.

[541] Shortland to Clarke, 14 April 1841, *Epitome*, C, p.138.

> man or woman who may be chosen by England to be King or Queen for ever[.]
>
> ka tuku ka hoko atu nei i enei kainga o matou (ko Mahurangi ko Omaha nga ingoa) me nga kainga katoa e takoto ana i roto i nga rohe e tuhituhihia ana ki tenei Pukapukakia te Karaka te kai tiaki o nga Tangata Maori mo te Kuini o Ingarangi mo ona uri iho mo tetahi tangata wahine ranei e waiho ai e Ingarangi hei kingi hei kuini ranei ake tonu atu[.][542]

The boundaries of the area encompassed by the deed ran from Te Arai Point in the north, inland to the source of the Whangateau 'then up and down again to the source of Waiwerawera thence up and along the ridge to the hill on the boundary of Te Teira's place to the Wade, along to the 'Kaipara portage' at Riverhead and following the coastline around the North Head of the Waitemata Harbour back to Te Arai, 'together with all the islands on the Coast and all the places not disposed of formerly within the boundaries described in this Deed'. All of the lands, trees, rivers and streams, ditches and fences, within the area described which had not already been disposed of were included in the deed, with the exception of Te Waimai a Tumu, which was to be reserved as 'a place of residence for us'. In return the 22 signatories to the deed were to receive '400 blankets, 60 cloaks, £200 cash, 60 gowns, 2 horses, 2 head of cattle, 200 pairs of trousers, 30 coats, 100 caps, 4 casks of tobacco, 6 bags flour, 2 bags rice, and 1 bag sugar'.

The area encompassed by the deed had been estimated at the time as containing 'One hundred thousand acres, more or less',[543] though one more recent estimate has placed it as closer to 220,000 acres.[544] In June 1841 the Colonial Secretary criticised 'the Natives who sold the land in question, but who neglected to point out the boundaries', unilaterally deducting £5 from the agreed purchase price for the lands in order to

[542] Turton's Deed No.192, Province of Auckland, p.251, in Berghan Supporting Papers, vol.6, pp.3599-3600; AUC 123, LINZ, [docs, vol.22, pp.7331-7338].

[543] Shortland to Clarke, 14 April 1841, *Epitome*, C, p.138.

[544] Rigby, 'The Crown, Maori, and Mahurangi', p.2.

remunerate those who had assisted with this work.[545] Perhaps just as pertinently, however, the Crown had taken no steps to ascertain the boundaries of the area it was purporting to purchase prior to signing a deed for the lands. The watershed dividing the Kaipara and Mahurangi districts 'did not follow a relatively clear ridge line', making the interior boundary particularly difficult to follow, while the location and extent of the reserve set aside in the deed was not specified and, in the absence of a plan, remains a mystery.[546] It is apparent that Clarke had not even walked the boundary lines of the proposed purchase or commissioned or completed a rough sketch plan of the area in question, let alone actually have the lands surveyed, prior to signing of the deed. Indeed, it seems likely that the deed had been signed in Auckland, meaning Clarke may not have even *visited* the lands in question prior to the sale. Instead, a proposal had been received from various chiefs of the Marutuahu confederation of Hauraki tribes on 12 April 1841 and a deed signed for the lands the following day.

Walking the boundaries prior to deed signing might at least have enabled other Māori with customary claims on the lands to be alerted to the impending sale, offering them an opportunity to alert Crown officials to their own interests in the lands prior to any transaction being finalised.[547] Instead, the offer from the Marutuahu tribes was apparently accepted at face value without any prior investigation of the extent of their customary claims over the lands, or any investigation of the customary claims of other hapū and iwi over the lands, or indeed any notification of the proposed transaction to other Māori who may have wished to inform the Crown of their interests in the lands concerned. Effectively this meant that other groups who may have wished to object to the proposed transaction or its boundaries, or who may have sought to be included in the sale, were not even privy to the information that their lands were about to be sold. And once they became aware of the transaction, their options were effectively limited to seeking compensation for their interests in the lands already alienated, having had no meaningful opportunity to exclude their lands from the area purchased from other iwi. Crown officials may have been peeved at having to meet multiple claims from

[545] Shortland to Clarke, 11 June 1841, *Epitome*, C, p.138.

[546] Rigby, 'The Crown, Maori, and Mahurangi', p.20.

[547] Ward, *National Overview*, vol2., p.129.

other tribes for compensation for their interests in the lands over the next two decades, but for Māori who had been effectively dispossessed of their interests without prior consultation by virtue of the 1841 deed the irritation was doubtless greater.

It has been suggested that the resources of the Crown were extremely limited in the first years of the colonial administration and that it would therefore have been unrealistic to expect the government to undertake an extensive inquiry into the rights of different parties at Mahurangi prior to signing the deed with the Hauraki tribes.[548] Yet it would not have been difficult for Clarke to travel to Mahurangi to inspect the lands in question, convene a hui of all interested parties to discuss the merits of the proposed transaction and its boundaries, and walk these in the company of the chiefs if they subsequently assented to the sale. Two weeks (or even two months) spent doing this in 1841 might have spared all parties from two decades of subsequent wrangling. Indeed, as Protector of Aborigines, these were the minimum measures Clarke ought to have adopted (along with reporting on the reserves required by Māori within such an extensive district, as opposed to the one reserve requested by only one of a number of different right-holder groups) in order to go anywhere near to meeting the Crown's protective obligations to Māori.

That the Crown was not entirely lacking in the requisite resources is suggested by the fact that a surveyor (Campbell), an interpreter (Edward Williams) and four Māori were sent to Mahurangi within a month of the deed signing 'for the purpose of determining the position of the Northern Boundary'.[549] Edward Williams was instructed that he should:

> proceed with the Natives of the Nga Ti Paoa Tribe together with one of the Assistant Surveyors to the Northern Boundary of the land lately purchased from that Tribe in order to ascertain with as much accuracy as possible the Northern and Western boundary of the said purchased.[550]

[548] Goldsmith, p.27.

[549] Felton Mathew (Surveyor General) to Colonial Secretary, 17 May 1841, IA 1/1841/560, Arch-NZ, [docs, vol.1, p.19].

[550] Clarke to Williams, n.d. [c.April-May 1841], MA 4/1, Arch-NZ, [docs, vol.4, p.1164].

Williams was furnished with a 'description of the boundary line as given by the Natives', which in conjunction with the fact that Wiremu Hoete (William Jowett) was one of the four 'Ngati Paoa' members to accompany the expedition and had also signed the 13 April 1841 deed, suggests that the Colonial Secretary may have been in error in stating that the vendors had refused to point out the boundary lines.[551]

Felton Mathew, the Surveyor General, forwarded the Colonial Secretary a detailed report on the results on this trip on 17 May 1841. Mathew noted that he had instructed Campbell 'to obtain from the Natives some well defined natural boundary such as would be presented by one of the small Rivers or Creeks which abound on this Coast with a view of preventing the possibility of any future doubt or difficulty arising on the subject'. Campbell had selected the Pakiri River as an appropriate point:

> but on proceeding to the spot which the Natives had determined as the Northern boundary, he found it to be a remarkable point or Headland at the Northern extremity of a long sandy Beach, eight miles in extent, surrounded by sand Hills, so decidedly and distinctly marked as to render it in every way eligible for the purpose.[552]

By happy coincidence the spot in question, Te Arai Point, also happened to be named as the northern boundary of the purchase in the deed. Mathew described the range extending from Te Arai in a west south westerly direction as a 'marked and well defined feature' which travelled into 'the lofty wooded Range separating the waters of the Eastern from those which flow into the Kiapara [sic] on the western coast, and which forms the western boundary' as:

> exceedingly rugged and difficult of access, and with but little exception covered with dense and almost impenetrable wood. The land is however in many places of a fertile description. There appears to be a small extent of

[551] Shortland to Clarke, 11 June 1841, *Epitome*, C, p.138. The other three Māori who accompanied Campbell and Williams are not named.

[552] Mathew to Shortland, 17 May 1841, IA 1/1841/560, Arch-NZ, [docs, vol.1, p.20].

> available country, consisting of a few thousand acres of good fern land, surrounding the small harbour of Matakana – a portion of which however is claimed by a person named Millon. Mr Campbell also reports that the natives expressed to him their intention of reserving three small Bays in that harbour, as a fishing station; but I am not aware if any such stipulation was made in the original agreement for the purchase.[553]

Although much of the Mahurangi district was well timbered with kauri and some pohutukawa, Mathew condemned the 'reckless and indiscriminate manner in which the Timber is destroyed at all these stations along the coast, which are occupied by Europeans'. The Surveyor General also reported that:

> The determination of the Southern boundary being at present a matter of no very great importance; and there being, besides, no natives at present here who could point it out, I propose to employ Mr. Campbell in making a Survey of the River at Mahurangi and of the available land in that vicinity.[554]

Mathew believed that through its proximity to the capital and easy communications by water, the head of the Mahurangi Harbour presented an ideal site for a small township, with the surrounding country suitable for small farms well adapted to the wants and means of 'the middling class of emigrants' expected in the colony. The Surveyor General proposed providing Campbell with a survey party and two or three months provisions to further identify the lands most suited for settlement. Lieutenant-Governor Hobson found this report 'extremely satisfactory' and approved of Mathew's recommendations.[555] Neither he nor Mathew apparently considered there any necessity to survey the external boundaries of the block, or even to adequately define the southern boundary.

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[553] Mathew to Shortland, 17 May 1841, IA 1/1841/560, Arch-NZ, [docs, vol.1, pp.20-21].

[554] Mathew to Shortland, 17 May 1841, IA 1/1841/560, Arch-NZ, [docs, vol.1, pp.22-23].

[555] Hobson, minute, 23 May [1841], IA 1/1841/560, Arch-NZ, [docs, vol.1, p.26]. The Surveyor General was informed that the governor had approved a survey party being despatched to Mahurangi for the purposes recommended 'as soon as possible'. Native Secretary to Surveyor General, 25 May 1841, IA 4/257, Arch-NZ. [Unable to be copied].

Yet Mathew's vision of a yeomen settlement in the Mahurangi district was already potentially jeopardised by the fact that extensive old land claims took in many of the most desirable points along the coastline.[556] Williams had been instructed to ascertain 'the extent of land previously purchased by Europeans included in the Boundary line' described in the deed, the names of the purchasers and the consideration given.[557] Mathew's report to the Colonial Secretary had noted Millon's claim at Matakana which, though contentious (as Parihoro's later muru demonstrated), was just one of ten old land claims covering the Mahurangi coast. Millon (and his partner Skelton) claimed to have purchased lands at Matakana from some of the same Hauraki chiefs with whom the Crown had negotiated its 1841 Mahurangi deed with.[558] It must have been particularly galling, when they eventually learnt of it, for chiefs such as Parihoro to find the Crown replicating the same purchase practices which, from their perspective, had already seen them dispossessed by private parties.

It seems possible, however, that the expedition to Mahurangi by Campbell, Williams and the four Hauraki Māori had at least alerted some other groups with claims on the land to what was going on, since on 29 June 1841 a further payment was made, this time to five members of Ngāti Whatua. On the same date Clarke had sought the governor's sanction for:

> the purchase of a piece of land lying on the north side of the Waitemata Harbour, extending from the north head of the harbour about eight miles west, containing Six thousand acres, more or less, from the Chief Tinana and others. The consideration required by the Natives is One hundred pounds in specie, one horse, with bridle and saddle, and one boat.[559]

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[556] Rigby, 'The Crown, Maori, and Mahurangi', pp.3-5.

[557] Clarke to Williams, n.d. [April-May 1841], MA 4/1, Arch-NZ, [docs, vol.4, pp.1164-1165].

[558] Rigby, 'The Crown, Maori, and Mahurangi', pp.76, 78.

[559] Clarke to Colonial Secretary, 29 June 1841, *Epitome*, C, p.150; Turton's Deed No.192, Province of Auckland, p.251, in Berghan Supporting Papers, vol.6, pp.3599-3600; AUC 123, LINZ, [docs, vol.22, pp.7331-7338].

Clarke's proposal was approved on the same date and the consideration listed was confirmed on a receipt signed by the five chiefs on the back of the original deed.[560]

Although the deed receipt simply referred to 'payment received by Ngatiwhatua for part of their land within the boundaries described' on the other side of the deed ('Ko nga utu enei ka riro mai i a Ngatiwhatua mo tetahi o to ratou wahi i roto i nga rohe kua oti te tuhituhi ki tua o tenei Pukapuka'), it seems apparent from Clarke's description that the payment was intended to cover a relatively small area, extending from North Head across in a westerly direction perhaps as far as either Hellyer's Creek or slightly further west to Lucas Creek. The paucity of the Crown's own records in relation to this payment – a recurring theme in the history of Crown purchasing in the north – makes it impossible to confirm whether this was Clarke's intention, but if so then the payment may have been intended to settle the southern boundary which had been considered a lesser priority at the time of Campbell and Williams expedition to Mahurangi.[561]

But if Clarke and other Crown officials believed that they had, by this payment, extinguished Ngāti Whatua claims on the Mahurangi block then they were sadly mistaken. On 10 December 1841 the Chief Protector reported that the chief Te Reweti and others wished to sell 'a large piece of land on the northern side of Waitemata, adjoining that recently purchased from the Chief Tinana and others'.[562] Three weeks later, on 29 December 1841, he informed the Colonial Secretary that the chiefs Kawau and 'Davis' (Reweti) had 'agreed to sell to Her Majesty's Government a portion of land to the north-west of Auckland, containing Ten thousand acres, more or less' for £300 in cash, three horses, two saddles, two bridles, and 40 blankets.[563] On the following day, the Protector was authorised to proceed with the purchase on the

[560] James Stuart Freeman (for Colonial Secretary) to Clarke, 29 June 1841, *Epitome*, C, p.150.

[561] Again, the area was subject to an old land claim, with Henry Tayler claiming to have purchased 1000 acres at Takapuna from three Ngati Paoa chiefs in November 1839. Rigby, 'The Crown, Maori, and Mahurangi', pp.78-80.

[562] Clarke to Colonial Secretary, 10 December 1841, *Epitome*, C, p.151.

[563] Clarke to Colonial Secretary, 29 December 1841, *Epitome*, C, p.151.

terms outlined.[564] On 3 January 1842 a further receipt for the cash and goods referred to was signed by four chiefs of Ngāti Whatua on the back of the original April 1841 receipt.[565] Dr Rigby notes that the wording of this deed was evidently changed from the previous deed receipt, so that it no longer encompassed 'some portion of their lands' within the boundaries, but now included 'the whole of their lands' ('mo ta wahi katoa').[566] If only extinguishing all of Ngāti Whatua's interests in the block was as simple as this. A very young J.G. Johnson (just 18 years old at the time) was listed as one of three witnesses to the transaction. He would be back a decade later to make yet more payments to Ngāti Whatua (and other groups) for their interests in the lands.

Perhaps it was this deed which Henry Tayler, a considerable claimant to lands in the district, had in mind in 1846 in recalling a conversation between one of the customary owners of the area and George Clarke Snr. sometime after Crown pre-emption had been lifted in 1844. Clarke reportedly reminded the un-named chief, who had subsequently entered into a number of pre-emption waiver transactions with private parties, that he had 'received, not long since, a number of Blankets for his Land' from the Crown. The chief, evidently unimpressed by this logic, had 'impudently' replied 'that he was not aware that the Blankets were given as payment for the Land, but that he considered they were a present from the Governor', according to Tayler.[567]

In any event, the location of the interests the Crown had purportedly extinguished by virtue of this latest deed remain a mystery owing to the absence of appropriate documentation. Donald Loveridge has suggested Hellyer's Creek as a likely location.[568] However, if George Clarke was correct in stating that the June 1841 purchase extended west some eight miles from North Head then this is likely to have

[564] Shortland to Clarke, 30 December 1841, *Epitome*, C, p.151.

[565] The English translation of the deed mistakenly referred to just £30 cash being paid, an error repeated in Turton's Deeds. However, the original text refers to 'toru rau pauna', and this is confirmed in a September 1843 return of sums paid to Māori in the purchase of lands. Felton Matthews, Commissioner of Audit, 15 September 1843, Statement showing sums paid and value of stores issued to aborigines in exchange for land during the years 1840, 1841, and 1842. *Epitome*, C, p.153.

[566] Rigby, 'The Crown, Maori, and Mahurangi', p.24.

[567] H. Tayler to Colonial Secretary, 6 June 1846, OLC 453, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5210.

[568] Loveridge, 'Ngati Whatua and the Crown', pp.111-112.

reached at least that location. Given his further statement that the new transaction 'adjoined' the earlier one, then the area encompassed by the January 1842 deed must have been considerably to the west of Hellyer's Creek. A map of Crown purchases in the Northland area evidently completed in the early 1860s shows the southern boundary of the Mahurangi block at Lucas Creek,[569] which raises the possibility that the new deed may have encompassed the area between Hellyer's Creek and Lucas Creek. However, such an area would not have encompassed anywhere close to 10,000 acres. It seems most likely that either the January 1842 transaction did not in fact adjoin the earlier one but overlapped it, or (perhaps more likely) it extended much further west, perhaps as far as Riverhead.

In fact, the next deed signed with respect to Mahurangi did not even record the tribal affiliations of those whose interests in the lands were supposedly being acquired, or the specific areas in which they claimed rights. In April 1842 Clarke was informed that the governor had approved 'the purchase of a small vessel for the Chief Pomare, in part payment for his interest in the land at Mahurangi, sold by that chief to the Crown for the sum of One hundred and fifty pounds'.[570] Although referred to in the past tense as 'sold', Pomare and six others did not in fact sign a receipt until 31 May 1842, which recorded simply that 'I Pomare give up to Mr. Clarke Protector of Aborigines, on behalf of the Queen, my places and all the places of my tribe within the boundaries of the place sold by Ngatipaoa to the Queen' ('ko ahua [sic – ahau?] ko Pomare ka tuku atu ki a te Karaka te kai tiaki o nga tangata Maori mo te Kuini o Ingarangi oku wahi me nga wahi katoa ano hoki o toku Iwi i roto o te Kaha o te kainga kua tukua nei e Ngatipaoa mo te Kuini').[571]

Later evidence makes it clear that the chief in question was Pomare II of Ngāti Manu, from the Bay of Islands. Pomare (or possibly his uncle Pomare I) had provided refuge to the Ngāti Rongo chief Te Hemara Tauhia at the Bay of Islands during the musket

[569] NZ Map 4313, ACL. http://www.aucklandcity.govt.nz/dbtw-wpd/maps/maps.html

[570] Freeman (for Colonial Secretary) to Clarke, 5 April 1842, *Epitome*, C, pp.138-139.

[571] Turton's Deed No.193, Province of Auckland, pp.252-253, in Berghan Supporting Papers, vol.6, pp.3600-3601. This receipt was not endorsed on the back of the original April 1841 deed and nor is it to be found with it.

wars and shared whakapapa connections that probably provided the basis of his interest in Mahurangi lands.[572] However, Te Hemara would later complain that his father's name had been fraudulently inserted into the list of signatories to the 1842 deed (an assertion supported by Johnson in 1853).[573] Clarke's extremely lax purchase procedures evidently were incapable of detecting even the most straightforward cases of fraud.

Lax Crown procedures also extended to the protection of reserves set aside especially for Māori use. In April 1844 the Te Waimai a Tumu reserve set aside in 1841 as 'a place of residence' for the Marutuahu tribes was purchased by the Crown for 400lbs worth of tobacco, with Governor FitzRoy evidently playing a significant role in the acquisition.[574] The only formal reserve within the huge Mahurangi block had thus itself been purchased by the Crown within three years of it being set aside for the benefit and occupation of Māori.

Yet beyond some delays in organising payments in goods and stock (which occasioned some of these to be converted into additional cash sums),[575] by the mid-1840s officials were confident enough of the Crown's title to the Mahurangi district to commence issuing timber licenses to a number of settlers in the area.[576] A series of paper transactions was one thing, but once the Crown began assuming the right to allocate actual lands and resources on the ground the response from those customary owners who had been ignored in the government's earlier land dealings in the area was swift. And government arguments that Māori such as those at Mahurangi who

[572] Maurice Alemann, 'Early Land Transactions in the Ngati Whatua Tribal Area', MA thesis, University of Auckland, 1992, p.75.

[573] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.139.

[574] Turton's Deed, No.194, Province of Auckland, p.253; AUC 121, LINZ, [docs, vol.22, pp.73270-7330]. FitzRoy informed the Colonial Secretary that he (FitzRoy) was 'to give that quantity of Tobacco for an extent of Land at Mahurangi, purchased by me on account of Government'. FitzRoy to Sinclair, 25 April 1844, IA 1/1844/1236, Arch-NZ, [docs, vol.1, p.130]. The deed itself also referred to the land being 'ceded to the Governor' ('tukua...kia te Kawana').

[575] In 1844, for example, Clarke reported that £60 had been paid to two members of Ngati Paoa in lieu of their claims to two horses under the April 1841 deed. Clarke to Colonial Secretary, 10 February 1844, *Epitome*, C, p.154.

[576] Rigby, 'The Crown, Maori, and Mahurangi', pp.25-28.

continued to demand payment for lands already supposedly sold would result in them being 'treated with contempt by the Pakeha' evidently cut little ice with the groups concerned.[577]

In March 1846 John Taylor applied for a license to cut timber 'on Government Land opposite to the Island of Kawau between George Paton's Grant and the headland commonly called Little Point Rodney'.[578] Taylor's application was duly referred to the Surveyor General to confirm whether the land was indeed government property and whether there were any objections to the issue of a license.[579] Ligar replied that there were no objections and a one year-license was duly approved on 16 March 1846 subject to payment of the required £5 fee.[580] Just over a month later, however, Taylor received a letter from Charles Davis on behalf of Te Hemara Tauhia and other chiefs:

> to request that you will forthwith desist from felling & sawing Timber upon Land situate at Mahurangi: "Te Ngaeri" by name. I am also directed to say that payment will be immediately demanded by them for all Timber removed from the Land referred to.
>
> The Land has never been sold to the Govt. as can be proved by Public Documents and by the united testimony of many honorable and influential chiefs of several Tribes.
>
> The above named Chiefs loudly exclaim against such infringements upon their rights, and insist upon the Land being vacated without further delay.[581]

Taylor immediately forwarded this letter to the Colonial Secretary, concerned that 'there may be some mistake with respect to the Crown's Title to the Land upon which

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[577] *Te Karere o Nui Tireni*, 1 May 1844, [docs, vol.18, pp.6052a-6053]. Translation by Dr. Jane McRae, May 2006.

[578] John Taylor to Colonial Secretary, 11 March 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.170].

[579] Sinclair, minute, 12 March 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.171].

[580] Sinclair, minute, 16 March 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.171].

[581] Charles Davis to Taylor, 22 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.168].

a License to cut Timber was issued to me', and requesting that Sinclair 'cause the Native Conveyance to the Government to be re-examined and otherwise to take measures to prevent unpleasant consequences to me at the hands of the Native chiefs mentioned in Mr Davis' Letter'.[582]

No doubt Taylor had the muru at Matakana just the previous year in mind – also the result of a settler occupying and using lands to which local Māori laid claim – when referring to potentially 'unpleasant consequences'. Yet if alarm bells ought to have been ringing in the ears of Crown officials by this stage, they were at best dim ones. Ligar wrote that he was 'not aware of any person either Native or European having a claim to this land'.[583] Clarke, meanwhile, relied on the terms of the April 1841 deed in claiming that all the lands between North Head and Te Arai belonged to the government, even whilst introducing a remarkable new twist to that transaction which caught even the Surveyor General by surprise. All of the land belonged to the government, Clarke wrote, with the exception of 'some inconsiderable purchases made by Europeans previous to the formation of the Colony' and 'a reserve near Waiwerawera made for the Chief Hemara and his dependents'.[584] Yet as Ligar noted, the April 1841 deed said nothing about a reserve for Hemara.[585] Indeed, he had not even been party to any of the several transactions with respect to the Mahurangi district. No wonder the Surveyor General felt obliged, in the light of this new intelligence, to declare that it would be necessary for him to 'go to the place and see the Natives'.[586] Perhaps the alarm bells were starting to ring just a little more clearly for at least some Crown officials.

Te Hemara's reserve was, it was later established, the result of a personal promise made by Governor Hobson to the chief at the time that he had gone to remonstrate

[582] Taylor to Colonial Secretary, 23 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.166].

[583] Ligar, minute, 23 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.167].

[584] Clarke, minute, 24 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.169].

[585] Ligar, minute, 23 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.167].

[586] Ligar, minute, 24 April 1846, IA 1/1846/475, Arch-NZ, [docs, vol.1, p.169].

about the fictitious assent of his father to the deed signed by Pomare.[587] Yet the claim to Waiwera highlighted the fact that there remained significant customary interests in the Mahurangi district which had not been extinguished by the Crown's various transactions of the early 1840s. The murky Reader Wood line of 1845, about which (typically for northern Crown purchases) little is known, might have been expected to defuse some of the tensions created as a result of the Crown's claims to ownership, given that, on the face of it, the survey reduced the area encompassed by the various Mahurangi purchases to date from 220,000 acres to just 56,000 acres.[588] In what may be a reference to this survey, the Colonial Secretary wrote to the Surveyor General in February 1845:

> in which you state, with reference to a Return of Purchases furnished to you, from the Protectorate Department, that the Boundary as described by that document of the "Mahurangi" Purchase does not correspond with the boundary as pointed out to you on the ground by an Officer deputed for that purpose from the Chief Protector's Office (1845) and request instructions.
>
> In reply I am commanded by H. Ex. to authorise your adopting the boundaries laid down in the Tracing which accompanies your Letter, with the alterations made, as shewn in red, & signed by H. Ex., – these boundaries being now ascertained after repeated examinations to be the correct ones.[589]

This indicates that there was at least some alteration to the boundaries in 1845, but in the absence of the letter and tracing from the Surveyor General it is impossible to say precisely what these were, or whether they corresponded with the Reader Wood line.[590]

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[587] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.139.

[588] Rigby, 'The Crown, Maori, and Mahurangi', p.30. See also Fig.4 (p.31) for a depiction of the Reader Wood line.

[589] Andrew Sinclair (Colonial Secretary) to Surveyor General, 19 February 1845, IA 4/257, Arch-NZ. [Unable to be copied].

[590] IA 1/1845/335 (with IA 1/1851/625), containing the Surveyor General's original letter and tracing, is one of many IA series 1 files for which no records can now be located.

Moreover, as Loveridge cautions, it is not immediately apparent that the intention of the Reader Wood line was to mark the external boundaries of the Mahurangi block.[591] The interior portion of the block was regarded as comparatively poor. Indeed, an 1842 application to sell lands 'taking in both sides of the Native road leading from Waitemata to Kaipara', adjacent to the lands already acquired around Riverhead, was rejected on the basis of the poor quality of the lands.[592] The Reader Wood line may simply have been intended to identify the more valuable coastal areas most immediately required for the purposes of settlement and timber licensing – even if it subsequently came to be regarded as the de facto boundary of the Mahurangi block. The absence of relevant documentation makes it difficult to determine the government's intentions in any more than a speculative manner. The point nevertheless remains a crucial one.

One snippet of correspondence from 1846 adds weight to suggestions that the Reader Wood line may have been intended to mark the external boundaries of the Mahurangi purchase. In June of that year, the Surveyor General, Charles Ligar, observed that:

> It is most desirable that the boundary, inland, of the Government purchase should be cut & well defined. This work was commenced, but discontinued in consequence of the disturbances at the North.
>
> If His Excellency would give an authority for completing the work from the Waitemata to the Arai (a point beyond Point Rodney) it would set this subject at rest & probably prevent future disputes.[593]

Whether such authorisation was given at the time is unclear. In any event, further surveys provoked strong Māori resistance. In September 1851 Samuel Elliot was engaged by the government to undertake surveys in the Mahurangi district. But in

[591] Loveridge, 'Ngati Whatua and the Crown', p.112, fn.331.

[592] Clarke to Colonial Secretary, 19 May 1842, *Epitome*, C, p.151; Loveridge, 'Ngati Whatua and the Crown', pp.113-114.

[593] Ligar, minute, 19 June 1846, OLC 453, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5212.

February of the following year he reported that, when undertaking surveys close to the southern entrance of Mahurangi Harbour and adjacent to the lands of a settler named Sullivan just a few days earlier:

> Roa, alias George King pulled away the Chain with violence, and fifteen or sixteen other natives offering the greatest annoyance, and threatening Sullivan to pull down his House if he did not side with them, so that they would not allow one acre to be laid off from the Land which they admit Sullivan had acquired by ample payment.[594]

Ligar, in forwarding Elliot's letter to the Colonial Secretary, observed that:

> The place referred to forms a part of a large district purchased from the Natives soon after the arrival of the Government at Auckland and is included in the same deed as the place purchased from the Government by Mr. Heyd'n, and on which he has met with obstructions from the Natives...
>
> These lands appear to have been purchased with great care and several additional payments have been made; but whether these few individuals have any land according to Native customs or usages I have not been able to ascertain, their own statements are very unsatisfactory, and lead me rather to a belief that they are endeavouring on their own responsibility to retain what has been fairly sold by their tribe as a body.[595]

The Surveyor General might have paused to reflect on why, if the original purchase was as satisfactory as he believed, 'several additional payments' had nevertheless been required to meet the demands of those who had not been included in the original transaction. Nevertheless, he at least recognised that the continuing repudiation of the Mahurangi transaction by a section of the owners could not fail to have serious consequences for the Crown in the longer term, writing that:

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[594] Samuel Elliot to Surveyor General, 17 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, pp.396-397].

[595] Ligar to Colonial Secretary, 19 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, pp.392-393].

> From what I have learned since I last wrote on this subject, I am still more inclined to believe that it is necessary to call the original sellers of this district together for the purpose of settling these disputes.

Perhaps if Clarke had bothered to call such a hui a decade earlier things might indeed have turned out more smoothly for all concerned. Even so, Ligar believed there were important political reasons why the Mahurangi situation now needed to be resolved as a matter of priority:

> Opposition to the Crown title is arising in other directions and I am aware that the Natives at other places take a great interest in what is going on at Mahurangi...and if they find that small parties of a tribe can with impunity repudiate the acts of the whole, and thereby take possession of choice places in a block of land formerly sold to the Government, there will be scarcely any portion of the lands acquired by the Government free for the location of settlers.[596]

C.L. Nugent, the Native Secretary, also believed that a meeting was advisable in order to determine whether there was any merit to the claims being advanced. He considered the likely cause of the difficulty was that the 'payment being often made in the absence of members of the tribe who conceive they had a claim to part of the money which has been withheld from them by the others, they come forward now when the land comes to be sold by the Government or used by license holders, to try and get a further payment for what they conceive to be their own property'.[597]

In the absence of any prior investigation into the nature of the claims being advanced, neither Ligar nor Nugent appreciated that the issue was not one of disgruntled tribal members who had missed out on a share of the payment and were now opportunistically seeking to repudiate the actions of their fellow tribal members, but of distinct tribal groupings who had not been party to the original transaction at all.

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[596] Ligar to Colonial Secretary, 19 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, pp.393-394].

[597] C.L. Nugent, minute, 26 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, pp.392-393].

These groups, most notably Kawerau and Ngāti Rongo, now saw lands which they had never relinquished being allocated by the Crown for the purposes of settlement and timber licensing without any prior consultation with them. Under the circumstances their protests were remarkably restrained.

The case of John Heyd'n, referred to in Ligar's report, ought to have alerted Crown officials to the nature of the grievances. In November 1851 Heyd'n had informed the government that 'Parihoro a native representing himself as a Chief of the tribe Parawhau, claims the timber on the Land that I have licensed from the Government, and...had insisted that I shall not cut any of the timber until he is paid'. Heyd'n requested the government's immediate attention to this issue, wishing to know 'the extent of Parihoro's claim in setting the Government License at defiance'.[598] Ligar, meanwhile, ignoring Heyd'n's statement that Parihoro was claiming through Te Parawhau, apparently considered the chief a member of Ngāti Whatua. In forwarding this correspondence to the Colonial Secretary, he noted that:

> a native named Pareora [sic] of the Ngati Watua [sic] tribe residing near Matakana has threatened Mr. Heyden [sic] if he persists in occupying the land sold to him by the Government and if he cuts timber under the terms of a Government license which he holds.
>
> This native together with Hemara & others have been endeavouring for some time to establish a claim upon the Mahurangi & Matakana Districts.
>
> As such pretensions if persevered in may lead to serious disturbances between the two races, I would suggest that the Native Secretary be requested to obtain a meeting of the Chief [sic] there who sold the land included in the districts, –

[598] John Heyd'n to Commissioner of Crown Lands, 3 November 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, p.391]. Heyd'n begins the letter by reminding the Commissioner that he had first brought these issues to the government's attention in November 1851. The earlier letter is not contained in the same file. Gisborne, the Commissioner of Crown Lands, informed the Colonial Secretary that he had never received it. Gisborne to Colonial Secretary, 6 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, p.389].

> at some convenient place, where the question of these claims might be discussed & fully settled.[599]

What appears to be a mis-dated letter gives the impression that the government was swift to respond to this potential crisis at Mahurangi. In fact, it appears to have been more than a year before any effort was made to begin the more detailed investigation of the claims of Parihoro and others to lands in the district. J.G. Johnson, in compliance with directions received from the Colonial Secretary, 'proceeded to ascertain the nature and extent of the Native claims to the Mahurangi and Matakana District, the limits into which their reserves could be confined, and the relative extent of those reserves compared with the rest of the block'.[600] His report, a copy of which was included in the outwards letterbook of the Native Secretary's office and was later reproduced in Turton's *Epitome of Official Documents Relative to Native Affairs*, is dated 24 February 1852 in both sources. Significantly, however, in the former source it follows a letter from the Native Secretary himself – dated 24 February 1853 – reporting the results of his recent visit to Mahurangi and noting that 'Mr Johnston's [sic] report I herewith forward which gives a full account of the nature of the respective claims'.[601] It is difficult to believe that Nugent would withhold Johnson's report from the Colonial Secretary for precisely a year before forwarding it on, especially given that, as late as April 1852, officials were still debating the most convenient time and location to meet with the claimants to Mahurangi.[602] All of the evidence therefore points to the likelihood that Johnson's reproduced was actually written in February 1853.

In December 1851 small additional payments had been made to Te Keene and two other Ngāti Whatua chiefs in respect of lands in the vicinity of Orewa and Okura.[603]

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[599] Ligar to Colonial Secretary, 7 February 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, pp.387-388].

[600] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.139.

[601] Nugent to Colonial Secretary, 24 February 1853, MA 4/1, Arch-NZ, [docs, vol.4, pp.1246-1247].

[602] Ligar, minute, 30 April 1852, IA 1/1852/369, Arch-NZ, [docs, vol.2, p.388].

[603] Pukekohe Block, AUC 103, LINZ, [docs, vol.22, 7316-7318]; Turton's Deed No.195, Province of Auckland, pp.253-254, in Berghan Supporting Papers, vol.6, pp.3601-3602; Pukekauere Block, Turton's Deed No.196, Province of Auckland, pp.254-255, in Berghan Supporting Papers, vol.6, pp.3602-3603.

And in January 1853 further payments had been made to various Hauraki chiefs, possibly, as Dr Rigby suggests, in response to the transactions subsequent to the April 1841 deed with Ngāti Whatua and Ngāti Manu.[604] That same month several Hauraki chiefs involved in the original Mahurangi transaction were requested to attend a meeting in the district scheduled for February 1853 'to point out the boundaries of the piece sold by the Nga te Paoa'.[605] An endless cycle of payments and counter-payments loomed as a possibility unless the Crown took more comprehensive measures for the settlement of Māori claims over the supposedly Crown lands at Mahurangi. But as yet Te Hemara and Parihoro, and their respective followers, had yet to be acknowledged in any of these transactions, even though both groups were (by the Crown's own admission) actually residing on lands within the district.

Nugent's February 1853 report noted that he had, earlier that same month, proceeded to the residence of Te Hemara, 'situated near the south head of Mahurangi Harbour, for the purpose of ascertaining the nature of his claim to a large tract of land which he now occupies'. The Native Secretary reported with respect to Te Hemara's claim that:

> From all I can learn, this Native has a claim to some reserve or compensation in that district, as his ancestors formerly occupied it, and he has no other place where he can subsist; and his claims are backed by several other Natives. A considerable block is also claimed by a Native named Parihoro, which includes land sold by the Government, and also land belonging to land claimants.[606]

None of this should have come as any surprise to officials. Parihoro had made his claims on the Mahurangi district patently clear through his 1845 muru at Matakana, whilst Clarke had brought the matter of the reserve claimed by Te Hemara to light in 1846. Believing there to be 'small probability of any settlement of the exorbitant Natives claims', Nugent had departed for Auckland early, leaving Johnson to undertake a more thorough investigation of the claims and requesting him to

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[604] Rigby, 'The Crown, Maori, and Mahurangi', pp.35-37.
[605] [Nugent] to Wiremu Hoete, 24 January 1853, BAIE 4308/1a, Arch-NZ (Akl). [Unable to be copied].

[606] Nugent to Colonial Secretary, 24 February 1853, *Epitome*, C, p.140.

endeavour to persuade the respective parties to also come into town, 'where they might be more induced to listen to reason than at their own places'.[607] He considered, however, that the claimants to Mahurangi lands, and especially Te Hemara, were 'more obstinate on account of their receiving payments from Europeans for permission to cut firewood and timber on the disputed land, which there would be no means of stopping unless the Native Land Purchase Ordinance were put in force'.

As to how the claims should be dealt with, Nugent noted that the parties concerned were now in Auckland:

> and I would suggest that the affair should be settled on the most liberal terms as regards Hemara, who appears to have a claim; but with regard to Parihoro, the question seems more difficult, as he lays claim to a large tract of land which contains several farms belonging to the Europeans who have purchased from old land claimants who have got Crown grants, and also a farm of 50 acres, for which a settler named Boyds has got a Crown grant; and this tract he asserts his intention of holding, and threatens to pull down Boyds' house and mill; and as his claim is acknowledged by most of the Natives who previously sold the land, I think that it would be judicious to extinguish it by giving a money payment and also a reserve of land.[608]

The Native Secretary had no doubt been heavily influenced in reaching these conclusions by Johnson's somewhat more detailed report into the nature and extent of the claims over the Mahurangi district. Johnson concluded that the 'country between Auckland and Whangarei was originally inhabited by a tribe called the Ngatirongo, a branch of the Kawerau, of whom Parihoro and Hemara are the remnants'. Ngāti Rongo, according to Johnson, had 'from time immemorial waged fierce disputes' with the Hauraki tribes relative to the right of fishing in the rivers of the Mahurangi district before eventually conceding this to the 'Ngatipaoas'.[609] When Ngāpuhi invaded the district in the 1820s Ngāti Rongo had been 'exterminated with the exception of two or

[607] Nugent to Colonial Secretary, 24 February 1853, *Epitome*, C, p.140.

[608] Nugent to Colonial Secretary, 24 February 1853, *Epitome*, C, p.140.

[609] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.140. See also MA 4/1, Arch-NZ, [docs, vol.4, pp.1248-1249].

three small parties or families, who either fled before Hongi Hika...or, taking advantage of relationship with the Bay of Islanders, amalgamated with the conquerors'. Te Hemara, according to Johnson, had taken refuge with Pomare, whilst Parihoro had sheltered at Whangarei. With the 'extermination' of Ngāti Rongo, the Hauraki tribes, having previously acquired the right to the bays and rivers, 'now took the land also, and, on the arrival of Her Majesty's Government at Auckland, they sold their claims to the whole block'.

This was no doubt a convenient conclusion given that the Crown had purchased Mahurangi from the Hauraki tribes in 1841 with scant attention to actual customary interests in the area. More than a decade later, Johnson's report provided retrospective justification for the Crown's hasty and ill-informed April 1841 purchase. Yet Johnson appeared unaware that Parihoro had taken refuge at Whangarei precisely because he was himself of Te Parawhau ancestry. The point was not unimportant given that Heyd'n had earlier suggested that the chief had advanced claims to his land on the basis of his Te Parawhau connections and given that the Crown had earlier received 1000 acres at Takahiwai for Parihoro's actions at Matakana. A simplistic depiction of customary interests involving just two parties – the conquerors and their 'exterminated' victims (who, rather unhelpfully, continued to occupy the lands and to assert their customary claims to ownership) – doubtless seemed appealing to Crown officials, even if the reality on the ground was rather more complex.

Within the 'exterminated' tribe, Johnson reported that 'two distinct parties and interests exist'. Te Hemara and his party merely sought 'a large reserve to live on', whilst Parihoro 'urges extravagant claims on a large portion of the block'.[610] With respect to the former claim Johnson added that:

> Hemara has proved to me that his father's name was inserted by Pomare in the deed executed by that chief, after his father's decease, and that the document is not genuine, and that he had remonstrated at the time with His late

[610] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.140.

> Excellency Governor Hobson, who guaranteed him certain reserves and sacred places, which statements are also corroborated by evidence.

Te Hemara's party was surprisingly large for an 'exterminated' group, 'numbering about 100 individuals', according to Johnson, and having 'no other place to reside on'. Although 'the whole of the Natives in the country are convinced of his right to what he claims', Johnson had successfully prevailed on the chief to curtail his demands to exclude lands potentially 'available for the location of European farmers'.

As for Parihoro's troublesome claim to an extensive tract of territory, including lands already occupied by settlers, Johnson concluded that the chief 'does not appear to be so strongly supported in his pretensions by the Natives in general, as the feeling among them is that he should relinquish his claims to all the land originally sold by Ngati Paoa as far as the Arai, and receive a small payment for the same, in addition to his reserve where he now resides, which would be just and reasonable'.[611] This was also a highly convenient conclusion to reach.

Yet if the government had concluded that Te Hemara was proving as helpful as Parihoro was obstructive, subsequent events demonstrated that both chiefs were equally determined to continue to assert their claims over Mahurangi. In August 1853 the Surveyor General reported that Te Hemara, along with Reweti, Te Peta and others had 'obstructed the operations of Mr. Anderson of the Hot Springs [Waiwera] when cutting timber under license on Crown Land'.[612] Ligar added that:

> The conduct of the Natives in this case is the more unjustifiable, in as much as they had consented to forego any claims on the said land, if a reserve was allowed to them in the vicinity. This arrangement was made with them by the Native Secretary & myself and we could not anticipate this sudden breach of their engagement.[613]

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[611] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.140.

[612] Ligar to Colonial Secretary, 14 August 1853, IA 1/1853/2099, Arch-NZ, [docs, vol.2, p.435].

[613] Ligar to Colonial Secretary, 14 August 1853, IA 1/1853/2099, Arch-NZ, [docs, vol.2, pp.435-436].

The Surveyor General therefore requested that, in order to allow the settler to obtain his firewood 'and to endeavour to bring the Natives to a sense of their duty', Johnson be sent to the district with as little delay as possible.

Just a few weeks later Johnson reported that he had succeeded in finally settling the question of the Mahurangi reserve on the same terms as agreed to before the Surveyor General and Native Secretary the previous summer (presumably referring to February 1853 when Johnson had persuaded the claimants to Mahurangi to travel to Auckland with him to discuss the matter). Anderson's men were now back at work, along with 'ten pairs of sawyers' who had been 'turned off' land at the head of the Puhoi River but had been allowed back on paying compensation to local Māori 'for using their timber'.[614] In order to 'prevent future disputes with the natives at Mahurangi', Johnson also proceeded to cut the boundaries of Te Hemara's reserve at Waiwera at this time.[615]

Based on the supposed agreements reached in February 1852 it only remained to acquire Parihoro's interests at Mahurangi and all would at last (in theory at least) be well. In November 1853 Parihoro and four other 'Rangatira o te Kawerau' signed a deed (witnessed by Johnson) extinguishing all of their interests in Mahurangi, but defining their particular area of interest as lying between the Whangateau and Mahurangi harbours for the sum of £150.[616] Curiously the text of the deed said nothing about any reserve, whilst the accompanying plan showed up to three possible reserves, including Te Hemara's reserve at Waiwera (even though he was not a signatory to the deed), a section of the Tawharanui Peninsula labelled simply 'Parihoro', and an area at Matakana, adjacent to the controversial old land claim of Millon and Skelton, marked simply 'Reserve for the Natives'. At least Crown officials were being consistent in maintaining their tradition of appalling record keeping when it came to Crown purchases in the north. The plan did, however, show the boundaries

[614] Johnson to Native Secretary, 3 September 1853, IA 1/1853/2099, Arch-NZ, [docs, vol.2, pp.431-433].

[615] Ligar to Colonial Secretary, 27 September 1853, IA 1/1853/2236, Arch-NZ, [docs, vol.2, p.447]; Johnson to Native Secretary, 3 September 1853, IA 1/1853/2099, Arch-NZ, [docs, vol.2, pp.431-434].

[616] AUC 85, LINZ, [docs, vol.22, pp.7308-7311]; Turton's Deed No.197, Province of Auckland, pp.255-256, in Berghan Supporting Papers, vol.6, pp.3603-3604.

of the Mahurangi block as running from Te Arai to Riverhead, adding further weight to the suggestion that the Reader Wood line was never intended to show the external limits of the block.

Just a few days after this, Haimona Pita, apparently a relative of Parihoro, complained that he had not been paid for his interests in Mahurangi, even though he was aware that the Hauraki chiefs (to whom, he asserted, 'the Land does not belong') had received a second payment. Johnson, reporting on this claim, suggested that Haimona's interests had been extinguished by a March 1844 payment of a hundred blankets, for which no deed or other documentation appears to exist.[617] Despite this, on 7 November 1853 a further deed was signed, with the sum of £20 being paid to Te Ara Tinana and £10 to Haimona.[618] Subsequent to this, the 'second payment' to the Hauraki tribes already apparently made in January 1853 was formalised with a further deed signed exactly a year later which purported to be the 'final and unreserved giving up of the land previously purchased'.[619]

Notwithstanding the government's apparent reassertion of the 1841 boundaries of the Mahurangi block, and the extensive round of second payments that had been made to many groups with claims on the land (with the notable exception of Te Hemara), in practice the Reader Wood line cut in 1845 had come to be viewed by most parties as the de facto boundary of the government block. And notwithstanding the legal prohibition on direct dealings between settlers and Māori under the Native Land Purchase Ordinance of 1846, the trade in informally leasing lands for timber felling purposes continued to flourish west of the Reader Wood line and within some of the reserves set aside to the east of this. Crown officials took strong objections to this trade. In 1855, for example, one settler, William McDonald applied for permission to legally occupy and cut timber on a portion of the lands belonging to Te Hemara

[617] Rigby, 'The Crown, Maori, and Mahurangi', p.42.

[618] Turton's Deed No.198, Province of Auckland, pp.256-257, in Berghan Supporting Papers, vol.6, pp.3604-3605.

[619] AUC 65, LINZ, [docs, vol.22, pp.7306-7307]; Turton's Deed No.199, Province of Auckland, pp.257-258, in Berghan Supporting Papers, vol.6, pp.3605-3606.

(presumably within his Waiwera-Puhoi reserve).[620] Donald McLean, for one, saw a number of reasons for opposing this, writing that:

> I am clearly of opinion that no permission should be granted to Europeans to cut timber on Native lands, 1st because it is contrary to law, 2ndly because it leads to endless disputes between them and the Europeans, 3dy because it will prevent the govt. from acquiring their land if they are allowed to dispose of the timber.[621]

Perhaps McLean had a point if a report published in *Te Karere Maori* just a few months before this application was anything to go by. The report noted that Te Hemara, 'one of the principal Chiefs of the Ngatirango [sic] tribe residing at Mahurangi' was residing on 'a most valuable reserve, the boundaries of which have been defined by the Government' and a Crown grant for which had been promised him.[622] Te Hemara, the newspaper noted, was 'a shrewd, thoughtful man', who seemed 'intent upon one thing – money making'. He had purchased a 20 ton schooner at a cost of £370 and '[b]eing anxious to make some use of his noble kauri forests, and having but little confidence in the perseverance of his fellow natives, he has engaged Europeans to saw his timber, and pays them at the rate of 15s. per hundred'.[623] But if Te Hemara was employing Europeans to saw some of his timber, the letter from McDonald suggested he was also illegally leasing some of the lands directly to other settlers. As McLean recognised, the lucrative income promised by the timber trade would prove a strong disincentive to the alienation of the reserve or the lands west of the Reader Wood line in the de facto possession of Māori notwithstanding the many Crown purchase deeds purporting to extinguish native title over these lands.

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[620] William McDonald to Colonial Secretary, 14 June 1855, IA 1/1855/1855, Arch-NZ, [docs, vol.2, p.660].

[621] McLean, minute, 18 June 1855, IA 1/1855/1855, Arch-NZ, [docs, vol.2, p.660].

[622] *Te Karere Maori*, 3 March 1855, [docs, vol.18, p.6056].

[623] *Te Karere Maori*, 3 March 1855, [docs, vol.18, 6057].

After 1854, therefore, the focus of Crown attention shifted to more localised transactions within the boundaries of the 1841 Mahurangi block, or overlapping into it, in order to bring an end to the illegal timber trade before it proved a major disincentive to alienation to the Crown. Johnson commenced negotiations in March of that year for the acquisition of two large blocks to the west of the Reader Wood line (but either substantially or entirely within the boundaries of the 1841 deed). In March 1854 he reported that he was 'negociating [sic] with the Natives, for the purchase of a tract of country, known as the "Kaipara Flats", situated to the west of Mahurangi, since complaints had been received from Māori 'that the settlers were pushing beyond the boundaries of the Government Block'.[624] On 3 June 1854 Johnson further reported that the lands in question, the two adjacent blocks of Ahuroa and Kourawhero, contained altogether about 32,000 acres, for which a total sum of £1200 would be required. Portions of the block had 'been much sought after by intending settlers', and there were, he added, several compelling reasons why the purchase should be concluded. Johnson noted in this context that:

> The original Mahurangi sale was made in the year 1841, by the Ngatipaoa and Ngapuhi, whom the right of conquest placed in possession of the land, and the descendants of the Kawerau and Ngaitahu[hu] who are the *roots of the soil* were not directly treated with at all, and were, at that time, too obscure, and persecuted by their more powerful neighbours, to urge their own cause. Subsequently, however, they united and located on their land which had been sold to the Queen. Hemara taking possession of a part of Mahurangi, and Parihoro, in a similar way, a portion of Matakana. Notwithstanding that ample reserves, and also a small money payment, have been lately granted to satisfy these men, they still waited the opportunity of obtaining some further payment for the lands of their tribe.[625]

The Commissioner added that:

[624] Johnson to Colonial Secretary, 30 March 1854, AJHR, 1861, C-1, p.52, [docs, vol.12, p.3885].

[625] Johnson to McLean, 10 June 1854, AJHR, 1861, C-1, p.55, [docs, vol.12, p.3886].

> The back boundary of the Mahurangi having been overstepped by the Europeans, and several selections and surveys under the new Land Regulations having been made, infringing on land claimed by these Natives, has at length afforded them the opportunity they sought for; and had I not brought about the offer which is the subject of this letter, considerable embarrassment might have arisen to the purchasers of land from the Crown, and I am of opinion that if these arrangements be carried out...the remainder of the Native land in this District will be purchased at a less [sic] rate, and that all ill-feeling with the Natives resulting from the former purchase will be forgotten.[626]

Te Hemara, Parihoro and other members of the 'exterminated' tribe had already caused 'considerable embarrassment' to settlers occupying purportedly Crown lands within the Mahurangi district. And the potential for further such embarrassment remained high. Simultaneous to these negotiations for Ahuroa and Kourawhero, Johnson was also endeavouring to acquire the Wainui block, estimated at 14,000 acres, and again substantially to the west of the Reader Wood line but within the 1841 boundaries. Johnson reported in June 1854 that the 'position of the back boundary of the old Mahurangi purchase, which was cut by Mr. Reader Wood...does not appear to be known by persons in the timber trade, and several parties with Government licenses are now cutting wood on the Native lands'.[627] Local Māori, according to the Commissioner, 'rather connive in these proceedings', waiting until a large quantity of timber had been sawn before detaining it until their demand for compensation had been satisfied.

In one case a party of Europeans had been forced to pay £100 for the return of their timber, whilst in other instances portions of forest land were being illegally 'purchased' from Māori (and in some cases being onsold to other Europeans at a great profit). Johnson noted 'the very detrimental effect that these irregular proceedings must produce upon the endeavours which are made to extinguish the Native title to

[626] Johnson to McLean, 10 June 1854, AJHR, 1861, C-1, p.55, [docs, vol.12, p.3886].

[627] Johnson to McLean, 3 June 1854, AJHR, 1861, C-1, p.54, [docs, vol.12, p.3886].

this part of the country'.[628] McLean agreed that the illegal leasing of timber from Māori which was being carried on to a great extent at Mahurangi 'must be gradually checked, so that the existence of such an irregular system, that has grown up in consequence of land purchasing being so much in arrear, may not impede your operations'.[629]

The Chief Commissioner approved the purchase of the Wainui and Ahuroa and Kourawhero blocks on 19 and 20 June 1854 and just a few days later Johnson concluded both purchases on the terms proposed. Yet privately he informed McLean a short while before this that:

> I might perhaps have got the Land for some two or three hundred [pounds] less, by breaking off negotiations and prosecuting parties under the Land Purchase Ordinance, but it is a question whether the delay which would have been involved, and the odium which such a course would have incurred at the hands of the Europeans & Natives, rendered such proceedings either expedient or prudent. On the other hand if the block is brought quickly into the market it will sell for far more than 10/- and amply repay the Government for the expenditure which I have asked for.[630]

The Wainui deed, signed by 'the Chiefs and Freemen of the Kawerau' ('nga rangatira me nga tangata o te Kawerau') on 22 June 1854 was notable for the inclusion among the signatories to a Crown purchase deed for the first time of Te Hemara Tauhia.[631] It was also, as Barry Rigby observes, notable for its virtually incomprehensible description of the boundaries of the block, which must have been all the more difficult to follow in the absence of any prior survey or a plan of the block attached to the deed.[632] Reporting on the completion of the transaction, Johnson also observed that an

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[628] Johnson to McLean, 3 June 1854, AJHR, 1861, C-1, p.54, [docs, vol.12, p.3886].

[629] McLean to Johnson, 20 June 1854, AJHR, 1861, C-1, p.56, [docs, vol.12, p.3887].

[630] Johnson to McLean, 12 June 1854, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3039-3040].

[631] AUC 109, LINZ, [docs, vol.22, pp.7319-7324]; Turton's Deed No.200, Province of Auckland, pp.258-259, in Berghan Supporting Papers, vol.6, pp.3606-3607.

[632] Rigby, 'The Crown, Maori, and Mahurangi, p.46.

unspecified portion of the first instalment of £600 for the land had been 'devoted to appease the jealousy of the Ngatiwhatua', which had 'entirely set at rest any apprehension which may have existed of uneasiness in that quarter'.[633]

The Ahuroa and Kourawhero lands, though nominally encompassing two distinct blocks, were included in one deed, given that these were contiguous.[634] This was again signed with 'the chiefs and freemen of Te Kawerau', but this time did not include Te Hemara among its 20 signatories.[635] Again, the deed was not accompanied by a plan. Indeed, in 1855, C.P. O'Rafferty, a surveyor employed by the Waste Lands Board, complained that Te Ahuroa was represented on a rough sketch map in his possession 'by four ruled lines enclosing the words "not yet explored". This is all I know, or can learn here about it.'[636] As will be discussed later in this report, O'Rafferty's memorandum prompted a significant debate among Crown officials as to the merits of surveying lands at the time they were purchased from Māori, as had yet to become standard practice in purchases completed within Auckland province.

This deed, did, however, contain one novel feature. Johnson reported that throughout the negotiations he had:

> endeavoured strenuously to extend the payments over a time, and to induce the Natives to re-purchase from the Crown any land they may wish to retain in the blocks for themselves; both measures being, I conceive, when acted upon judiciously, a great improvement on the system of purchasing land from the Natives which has been hitherto adopted. Both these measures are, however, strongly opposed by the Natives in this District, because they are new to them.[637]

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[633] Johnson to McLean, 22 June 1855 [sic – 1854], AJHR, 1861, C-1, p.57, [docs, vol.12, p.3887].

[634] Johnson to McLean, 22 June 1854, AJHR, 1861, C-1, p.57, [docs, vol.12, p.3887].

[635] AUC 402, LINZ, [docs, vol.22, pp.7489-7493]; Turton's Deed No.201, Province of Auckland, pp.260-261, in Berghan Supporting Papers, vol.6, pp.3608-3609.

[636] C.P. O'Rafferty, memorandum, n.d. [c.September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, p.717].

[637] Johnson to McLean, 22 June 1854, AJHR, 1861, C-1, p.57, [docs, vol.12, p.3887].

He had succeeded with both measures to a modest extent, however, with the owners agreeing to accept three-quarters of the payment at the time of signing and the remainder on 1 January 1855. And with respect to the second object, Johnson reported that Te Kiri Kaiaparaoa had agreed to purchase back 40 acres at the fixed rate of ten shillings per acre under Grey's regulations of March 1853. Johnson thought this a very important precedent in a district where 'the sellers of land are so fond of making reserves, which are very inconvenient to the settlers, when they can do so without paying for them'.[638] Yet remarkably the land which Te Kiri had been so keen to retain was, as both the deed and a subsequent report from Johnson disclosed, a wāhi tapu. Johnson was surely taking his enthusiasm for the re-purchasing policy just a little too far in deducting £20 from the purchase price for the privilege of allowing Te Kiri to retain the wāhi tapu in question.[639]

Yet Johnson's boss would later prove he had a few tricks of his own up his sleeve. In 1854 McLean had noted that the 'general opposition' of Māori generally within the Auckland province to the alienation of their lands had rendered it advisable 'to secure by an immediate payment of a first instalment any tract of land to which they have an undisputed title', a tactic he claimed which would open up 'many tracts of country that were previously locked up from European enterprise'.[640] Practising what he preached, in March 1857 McLean successfully advanced £270 to claimants to the Pakiri South block during his tour of the north.[641] In 1855 Johnson's offer of £1000 for an area extending from Pakiri towards Whangarei estimated at 8000 to 10,000 acres had been treated 'with great contempt' by the principal claimants.[642] Yet McLean reported upon his return to Auckland in late March 1857 that the owners of the Pakiri block had agreed to accept just £1070 for an area nearly four times the size

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[638] Johnson to McLean, 22 June 1854, AJHR, 1861, C-1, p.57, [docs, vol.12, p.3887].

[639] Johnson to McLean, 16 October 1854, AJHR, 1861, C-1, p.60, [docs, vol.12, p.3889].

[640] McLean to Colonial Secretary, 25 July 1854, IA 1/1855/1734a, Arch-NZ, [docs, vol.2, pp.638-639].

[641] AUC 111, LINZ, [docs, vol.22, 7325-7326]; Turton's Deed No.202, Province of Auckland, pp.261-262, in Berghan Supporting Papers, vol.6, pp.3609-3610.

[642] Johnson to McLean, 20 October 1855, AJHR, 1861, C-1, p.68, [docs, vol.12, p.3893].

of this. Churton, a surveyor, had already traversed the boundaries with some of the principal chiefs and had estimated the block at 38,000 acres. McLean noted that the balance of £800 would be paid once arrangements had been made for the acquisition of adjacent lands but that:

> The price for the large block is not to exceed 8d. per acre, and when it is considered that the whole of these lands have been previously paid for by the Government, it is absolutely necessary that the utmost economy should be exercised in making a payment to the few Natives resident on the land, as I find on enquiry that they also participated in the payments made to Ngatipaoa and others.[643]

McLean added that in all cases 'where lands have been purchased, and a fair price given to the Natives, it appears to me that a nominal sum is all that can be considered as justly due to those claimants whose rights from various causes may not have been recognised at the time'.

Perhaps McLean was simply trying to cover his tracks here since he had, in the previous sentence, asserted that the Pakiri owners had already participated in payments for Mahurangi, implying that they were not disgruntled claimants who had missed out on a share of the money but simply refused to recognise or acknowledge the Crown's purported 'purchase' of their lands and were therefore being paid yet again for these to end their longstanding repudiation of the transaction. McLean may well have used the argument that the land was already the Crown's to drive down the price for the Pakiri block, though the owners might well have responded that it lay to the north of the Reader Wood line, which had been recognised at various times as the de facto limits of the Crown's claims. Either way, McLean and the Crown emerged a clear winner. McLean's close friend and Kaipara Land Commissioner John Rogan would later inform the Chief Commissioner with respect to the just over a sixpence per acre paid that 'you got that Pakiri block at a ridiculous low price [;] the Kauri alone is worth 20 times the sum paid by the Govt.'.[644] It was intended, no doubt, as a

[643] McLean to Johnson, 21 March 1861 [sic – 1857], AJHR, 1861, C-1, p.75, [docs, vol.12, p.3896].

[644] Rogan to McLean, 24 June 1859, McLean Papers, folder 541, ATL, [docs, vol.10, p.3244].

compliment rather than a criticism. Such was the nature of Crown 'protection' of Māori interests when it came to purchasing their lands by the late 1850s.

The Crown may have got itself a bargain, but again it was not without contention. Just a few months after the deed signing, in August 1858, McLean wrote to the surveyor, Churton, to inform him that Te Kiri had alleged that 'when you were engaged in surveying the Pakiri Block, he objected to include Omaha in the boundary; and that he prevented, on some occasion, your using a survey chain on that part of the lands he wished to retain'.[645] Churton was requested to report whether this was really the case, and although his response is unknown, T.H. Smith reported in April 1859 that Te Kiri had visited Auckland in an apparently unsuccessful effort to gain an audience with the governor over his claims to Omaha. The chief had 'got a setting down at the [Native] office', Smith added, 'but is "pakeke" still – if we take his land [he] will sell no more etc. – but I fancy he feels his position very weak'.[646]

Just a few months later, however, Smith was beginning to think that the case for rejecting Te Kiri's claim was even weaker. In August 1859 he informed McLean with respect to Rogan's impending visit to Omaha to investigate the claim that it was:

> becoming an awkward case[.] Kiri has been turning off a Settler who recently purchased an allotment there – Rogan, from what he has heard of the case is disposed to regard Kiri['s] claim to a reserve there as not so unfounded as was supposed – it seems the surveyor's line was stopped before reaching the land Kiri claims – The difficulty now is to preserve the dignity of the Govt. in the matter and to admit the claim after its positive rejection when urged by letter – I hope Rogan will manage to avoid the appearance of being coerced into a recognition of the claim.[647]

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[645] McLean to A. Churton, 30 August 1858, *Epitome*, C, p.142.

[646] T.H. Smith to McLean, 26 April 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, p.2821]. Smith added that Te Hemara was also in Auckland, urging his claims for compensation for a road running through his lands, a promise Governor Browne apparently believed had been made, despite the provincial authorities declaring that he would not receive anything from them.

[647] T.H. Smith to McLean 26 August 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, p.2841].

Clearly the 'dignity of the government' was deemed more important than righting an obvious injustice: Te Kiri had clearly been informed the previous year that his claim was without foundation. Now that the government had discovered it was wrong it did not wish to concede the point to Te Kiri.

Smith wrote again a few weeks later that Rogan was shortly to visit Omaha for the purpose of inquiring into Te Kiri's case, of which, he added, Rogan:

> takes a more favourable view than was adopted at the office – The fault lies at the door of the Surveyor who never made the circuit of the boundaries – Kiri has been warning Europeans off the ground and a correspondence between the Prov. and Genl. Govts. has resulted.[648]

Apart from protecting its 'dignity', it would appear that a more practical difficulty stood in the way of acknowledging the claim, since much of the area had already evidently been settled by Europeans. Rogan himself wrote to McLean on 25 September 1859 that 'Old Kiri is giving a great deal of trouble about Omaha and I received an official from Smith to investigate the matter but I cannot do much in it. I am afraid it will have to stand over for you.'[649] Smith's official instructions to Rogan, drafted on 27 August 1859, noted that John Suckley, 'a purchaser of an allotment of land at Omaha, within the Pakiri Block, reports that his occupation of the same has been interfered with by certain Natives not named'. The government had, he added, inferred that this was 'probably the act of the Chief Te Kiri, who...claims a reserve at Omaha'. Rogan was accordingly instructed to ascertain the grounds upon which Te Kiri preferred his claim and, if these appeared reasonable, on what basis he might be willing to treat with the government in respect to these, at the same time using his influence to 'induce him to abstain from further interference'.[650]

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[648] Smith to McLean, 12 September 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs., vol.9, p.2845].

[649] Rogan to McLean, 25 September 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, pp.2848-2849].

[650] Smith to Rogan, 27 August 1859, *Epitome*, C, p.87.

Just three days after informing McLean that the matter would have to be sorted out by him, Rogan completed his own report into Te Kiri's claim over Omaha. It was perhaps inevitable, after Te Kiri rejected Rogan's offer to exchange his claims to 668 acres at Omaha for a five-acre township lot that the report should prove little more than a whitewash. Rogan may have been disposed to favour the claim in private, but the 'dignity' of the Crown was, after all, at stake and would not be greatly boosted by having to remove large numbers of settlers from the lands in question in order to return these to the chief. Whilst at Omaha Rogan had been escorted to a site marked 'M' on a plan of the block, where:

> Te Kiri halted and pointed out a spade mark, which he stated was made by him in [the] presence of a number of Natives and the Surveyor, previous to the survey of the Pakiri block, and that he called Mr. Churton's attention to this place at the time, and Mr. McDonnell, who was one of the survey party, substantiated generally what Kiri stated.[651]

Rogan informed the chief that 'he was in error, in the first instance, in not having a clear understanding as to the land he wished to have reserved'. Yet Te Kiri countered that the boundary of his reserve had been pointed out to the surveyor long before the land was surveyed and when it was being subdivided he had actually stopped the survey at the same place and warned Churton that the pegs would be pulled up if they crossed on to his reserve. In the light of this fairly compelling evidence, Rogan made his offer of a township section, along with an unspecified small sum to develop the land. Te Kiri replied that 'he would not accept from the Government land which belonged to himself', with Rogan adding that 'a discussion ensued which arrived at a point beyond which I did not think it advisable to persevere, and told him that I should leave the whole matter as it stood before'. Rogan concluded his report by noting that:

> On my arrival in town I mentioned to Mr. Churton what Kiri advanced, and he admits having witnessed the mark being made, but is quite clear that Kiri is

[651] Rogan to McLean, 28 September 1859, *Epitome*, C, p.143.

> under a misapprehension as regards the Reserve, as he never, during the period of survey, explained to him that he intended to reserve this place, and that no question whatever arose until long after the survey was made and the money paid over to the Natives, and as the Chief Commissioner who negotiated this purchase is of the same opinion, I am inclined to think that the large reserve which Kiri now claims was an afterthought of his, although he seems quite clear that he never alienated this portion of the block.[652]

The Crown may have been concerned to protect its dignity but it was equally clear that Te Kiri was not going to lightly abandon his claim. Indeed, barely a fortnight after Rogan's report was completed the Native Secretary's office received yet another complaint from a separate settler who had been prevented from occupying lands at Omaha.[653] In February 1861 Rogan returned to Omaha to again seek to settle the issue. Upon his arrival at Whakatuwhenua, part of the land claimed by Te Kiri, the chief pointed out an area of about ten acres used as a landing spot and 'insisted upon retaining this place before entering any negotiations' with Rogan, which, the chief added, 'entirely depended on the terms' offered him. Back at Omaha Te Kiri again pointed out an area he had 'determined to hold for his own and his friends' use', Rogan adding that 'as there is a party of Natives belonging to Tauranga located on a portion of it, he could not easily, if he would, dispose of it, as it would be difficult to oust these people from their cultivations'.[654]

On the other hand, Te Kiri was willing to dispose of his claims to 'a great portion of the land held in dispute' in return for £100 and the lands which he wished to retain. Subsequent to this, however, 'a difficulty arose between Te Kiri and Te Tawera people regarding a cultivation within...an allotment of land purchased by a settler who is most anxious to occupy it', for which Te Kiri indicated that a sum of £10 or £20 would be required in order to induce the Te Tawera people to abandon their cultivations. But while Rogan had apparently succeeded in persuading Te Kiri to renounce his claims to about 505 acres, the chief insisted on retaining 163 acres.

[652] Rogan to McLean, 28 September 1859, *Epitome*, C, p.143.

[653] Smith to D. Mattheson, 28 October 1859, MA 4/3, Arch-NZ, [docs, vol.4, p.1366].

[654] Rogan to McLean, 13 February 1861, *Epitome*, C, p.144.

Rogan remained keen to induce the chief to abandon his claims over this remaining area and reported that 'it would materially facilitate my operations hereafter in negotiating for the greater part of it if I am authorized to purchase for Te Kiri 30 or 40 acres of land which is situated on the coast line between Whakatuwhenua and Pakiri, which he is most anxious to obtain'.[655]

Te Kiri evidently was not prepared to abandon his claims to the balance of the reserve he had requested in 1858, however, and a week later Rogan forwarded McLean a receipt for £100 and £10, 'which has been paid to Kiri in consideration of waiving his claim to a portion of land held in dispute at Omaha, and for defining the boundary between the part retained by himself and that disposed of to the Government'. Rogan had evidently succeeded in arranging with Te Kiri to persuade Te Tawera to abandon their cultivations without additional payment, informing McLean that the balance of £10 would be returned to the Treasury upon his return to Auckland. He had, though, persuaded Te Kiri to leave out 'nearly the whole of the land on the east side of the road leading to the beach' at Whakatuwhenua.[656] The untranslated receipt enclosed with Rogan's letter does not appear to have been regarded as an official deed, but nevertheless formalised these arrangements:

> No tenei ra, no te 18 o nga ra o Pepuere, 1861, ka riro mai i au, no te Rokena, Kotahi rau pauna moni. Ko te tikanga o enei moni, he whakapumautanga i te rohe o te wahi whenua kei Omaha, ka kapea nei ki waho o te rohe o to te Kuini wahi, he whenua moku. Ko te rohe tenei:– Ka timata ki te puwaha o te wai o Kaiohuohu, ka haere tata atu ki Motoruru, ki te moana. Ko te kumore ki te taha ki te marangai o tenei rohe ka puritia; ko te taha ki te hauauru o tenei rohe kua riro katoa atu ia Te Kuini i te hokonga o te Makarini i mua.
>
> Ko te wahi, kei te Whakatuwhenua, ka puritia hei nohoanga moku, kua oti i a maua ko te Rokena te whakarite, me te whakatakotoria nga rohe.

[655] Rogan to McLean, 13 February 1861, *Epitome*, C, p.144.

[656] Rogan to McLean, 20 February 1861, *Epitome*, C, p.144.

> A Kotahi te rau pauna i riro mai i au mo te waerenga o te Tawera i roto o te pihi whenua o te Pakeha, ko Kunihi (Duncan Matthieson), a maku te whakaaro ki aua tangata mo te mea ka whakarerea rawa o ratou mahinga ki taua wahi.[657]

This receipt has recently been translated by Dr Jane McRae as follows:

> On this day, the 18th of February 1861, I obtained from Rogan, one hundred pounds in money. The reason for this money was to confirm the boundary of the part of land at Omaha which is outside the boundary of the Queen's part [as] land for me. This is the boundary: beginning at the mouth of the Kaiohuohu stream, it goes out some way towards Motoruru and to the sea. The headland to the eastern side of this boundary is retained; the side to the west of this boundary was all acquired by the Queen through the earlier sale by McLean.
>
> Rogan and I have completed the arrangement and the laying down of the boundaries [for] the part of Te Whakatuwhenua retained for me to live on.
>
> Also I took one hundred pounds for the clearing of Te Tawera in the piece of land of the Pakeha, Duncan Matthieson; it was my idea in regard to those people because they completely abandoned their work on that place.[658]

Smith reported that Rogan had 'succeeded very well at Omaha',[659] though Te Kiri had at least managed to retain possession of about a quarter of the reserve wrongfully denied him in 1858 (a title for 155 acres of which was successfully applied for by his daughter, Rahui Te Kiri, in the Native Land Court in 1897).[660]

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[657] Enclosure No.1, in Rogan to McLean, 20 February 1861, AJHR, 1861, C-1, p.91, [docs, vol.12, p.3904].

[658] Translation by Dr Jane McRae, March 2006.

[659] Smith to McLean, 12 February 1861, McLean Papers, typescript, vol.19, MS-1324, ATL, [docs, vol.9, p.2870].

[660] Rigby, 'The Crown, Maori, and Mahurangi', p.60.

This did not bring an end to claims on the Pakiri lands, however, as another chief, Tauwhitu, sought the return of lands at Whangateau in occupation by local Māori but also claimed by Ranulph Dacre on the basis of a pre-1840 purchase by William Webster from some Hauraki people.[661] Rogan reported that Tauwhitu and his people had 'had undisturbed possession of the place for upwards of 10 years' and recommended some arrangement be made with Dacre 'in order to secure the Natives in possession of their houses',[662] but the claim was still being pursued in 1927, when a petition concerning it was investigated by the Sim Commission.[663] And in June 1861 Rogan had done his best to dismiss both this and the claim of Te Kiri at Omaha (for which the Crown had already paid the chief £100 just a few months earlier) by declaring that 'while I was at Mahurangi lately Te Hemara said he was one of the party who pointed out the boundaries to the surveyor, and that the boundary described in the deed of purchase is correct'.[664] Te Hemara had not signed the Pakiri South deed in his own right, however, and his primary area of interest was further south in the Waiwera-Puhoi area.[665] Clearly, the 'dignity' of the Crown was still deemed sufficiently important to seek to minimise the claims of local Māori on the Mahurangi lands.

Rogan's dealings with Te Kiri had become extensive, since by 1859 he had taken over land-purchasing operations within the Mahurangi district from Johnson. By April 1859 Rogan had targeted the Waikeri-a-wera block, at the Te Arai Point end of the old 1841 boundaries, for acquisition, considering that this would connect the whole line of coast from Whangarei down to Auckland.[666] In June of that year he informed McLean privately that he had traversed the boundaries of the Waikeri-a-wera block and engaged a surveyor, McDonnell, to survey the area, which was 'by this time completed & I am only waiting to know the area in order to settle the price when I

[661] ibid, pp.94-95.

[662] Rogan to McLean, n.d. [c.1860-1861], Le 1/1861/228, Arch-NZ, [docs, vol.5, p.1832].

[663] Rigby, 'The Crown, Maori, and Mahurangi', pp.96-98.

[664] Rogan to McLean, 5 June 1861, Le 1/1861/228, Arch-NZ, [docs, vol.5, pp.1827-1828].

[665] Rigby, 'The Crown, Maori, and Mahurangi', p.57.

[666] ibid., p.60.

shall go again to pay the money'. Rogan gloated that he had 'got on thunderingly with the Natives & have laid a train for the acquisition of extensive blocks of very desirable land & am therefore in good humour with myself'.[667] He was, Rogan added, 'under some vague impression that you stipulated with the Natives for the price of Waikeri a wera to be the same as that of Pakiri 6d. an acre [;] why I should think so I cannot say but it is worth more than twice that figure. I suppose so long as I get it reasonably it will be alright'.[668]

On 19 August 1859 Rogan reported that he had arrived at Pakiri but after waiting ten days for Arama Karaka to turn up, the other claimants to the block:

> became so impatient, that I was compelled to pay the money to them (they having promised to satisfy any claim which Arama Karaka has on the land),[669] or run the risk of breaking off the arrangement altogether for an indefinite period, and on Monday the 15th the deed was executed and the money paid over to Te Kiri and Te Urunga.[670]

Rogan had succeeded in securing the 12,738-acre block for just £500 (or just over nine pence per acre).[671] Nearly a quarter of the money was immediately handed back to him, with Te Kiri returning £100 as part payment for an advance he had received from the government to purchase a vessel, and Te More repaying £20 apparently

[667] Rogan to McLean, 24 June 1859, McLean Papers, folder 541, ATL, [docs, vol.10, p.3243].

[668] Rogan to McLean, 24 June 1859, McLean Papers, folder 541, ATL, [docs, vol.10, pp.3244-3245].

[669] Arama Karaka Haututu forwarded petitions to Parliament with respect to the Mahurangi district in both 1883 and again the following year. Neither of these appear to have related to Waikeri-a-wera. The 1883 petition concerned his claims to 'a long list of lands…lying north of the Waitemata to the Orewa', and the subsequent petition sought 'an opportunity of examining the signatures attached to two deeds purporting to be the sale of the Takapuna Block'. Both petitions were rejected by the Native Affairs Committee on the basis that there had been several deeds signed in respect of these lands 'and Arama Karaka's name is attached to the Deeds of sale'. AJHR, 1883, I-2, p.1; AJHR, 1885, I-2, p.5; Native Affairs Committee, Minute Book, 10 July 1883, Le 1/1883/8, Arch-NZ. [Unable to be copied].

[670] Rogan to McLean, 19 August 1859, AJHR, 1861, C-1, p.88, [docs, vol.12, p.3903].

[671] AUC 287, LINZ, [docs, vol.22, pp.7357-7358]; Turton's Deed No.117, Province of Auckland, pp.156-157, in Berghan Supporting Papers, vol.6, pp.3572-3573.

advanced him on account of the Mangawhara (Hoteo) block Rogan had targeted as part of the extensive acquisitions he hoped would follow Waikeri-a-wera.[672]

Rogan had targeted the southern Kaipara region for future acquisitions, mistakenly believing (as Rigby notes) that the whole of the eastern coastline between Te Arai and the North Shore had now been acquired.[673] It had if the 1841 boundaries were relied on, though the extensive transactions negotiated subsequent to that indicated that even the Crown had long ceased maintaining the pretence that the initial deed with the Hauraki tribes had extinguished all Māori claims within the Mahurangi block. In fact, the last few deeds signed with respect to Mahurangi in the pre-1865 period overlapped extensively into the southern Kaipara region. The Komokoriki deed, signed in September 1862 with Te Hemara Tauhia and other 'Chiefs and People of the Tribe Ngati Rango', encompassed an area of 35,395 acres, connecting up the 1854 Ahuroa and Wainui purchases on the Mahurangi side and taking in a large area to the west of the 1841 boundary.[674] No reserves were allocated for Māori within this large block. And as Barry Rigby notes, a second deed signed in respect of a 395-acre area at Komokoriki just over a month later, though purporting to cover an 'additional' area, appears simply to have been intended to adjust the overall purchase price to a flat rate of 2/- per acre.[675]

In January 1864 the last Crown purchase of the pre-Native Land Court era with respect to Mahurangi lands was completed. Early that month Rogan reported from Te Awaroa that the chief Tamati Reweti had 'offered for sale to the Government a block of land named Pukeatua, containing about twenty thousand acres (20,000 acres) situated within a few miles of Auckland, for 7s. an acre'. Rogan informed the chief that he had no authority to agree to pay such an amount but would refer the matter back to the government. As he had not been able to inspect the block, Rogan

[672] Rogan to McLean, 19 August 1859, AJHR, 1861, C-1, p.88, [docs, vol.12, p.3903]; Rigby, 'The Crown, Maori, and Mahurangi', p.61.

[673] Rigby, 'The Crown, Maori, and Mahurangi', p.62.

[674] AUC 99, LINZ, [docs, vol.22, pp.7314-7315]; Turton's Deed No.203, Province of Auckland, pp.262-264, in Berghan Supporting Papers, vol.6, pp.3610-3612.

[675] AUC 98, LINZ, [docs, vol.22, pp.7312-7313]; Turton's Deed No.204, Province of Auckland, pp.264-266, in Berghan Supporting Papers, vol.6, pp.3612-3614.

recommended that an officer be despatched for these purposes, following which the government should fix the highest limit per acre he was authorised to offer for the land. Rogan believed that if the government were prepared to pay 4s. 6d. or 5s. per acre the purchase could be concluded at once.[676] However, perhaps unbeknown to Rogan, S.P. Smith had evidently already surveyed the block,[677] and just a few days later Rogan offered £3550 for the 23,800-acre block, or just under three shillings per acre. A deed was accordingly signed with 'the Chiefs and People of the Tribe Ngatiwhatua' for this amount on 20 January 1864.[678] A large area of land purchased from Māori on both the southern Kaipara and Mahurangi sides was connected up by virtue of this transaction.

In the Mahurangi district just a few substantial areas of land remained in Māori ownership by 1865, including the area between Pakiri South and Waikeri-a-wera which Crown officials had apparently overlooked, the reserve for Te Hemara and his people at Waiwera, and smaller reserves at Tawharanui and elsewhere. It had taken the best part of 25 years, but by 1865 the Crown had successfully managed to extinguish native title to the vast bulk of the Mahurangi block it had purported to purchase in 1841. The process had been neither pretty nor well-planned but went a long way to ensuring Mahurangi Māori would be rendered virtually landless by the twentieth century.[679]

### 5.3 Hauraki Gulf Islands

Nothing exemplified the looseness of Crown purchasing in the north better than the casual manner in which a vague reference in the original Mahurangi deed signed with the Hauraki tribes in 1841 would later be used to claim ownership of several valuable islands in the Hauraki Gulf. The deed signed with the Marutuahu tribes in April 1841

[676] Rogan to Colonial Secretary, 7 January 1864, *Epitome*, C, p.110.

[677] Philippa Wyatt, 'Ngati Whatua o Kaipara ki te Tonga and the Crown, 1840-1869', 1998, Wai-312, A3, pp.261-262.

[678] AUC 152, LINZ, [docs, vol.22, pp.7339-7340]; Turton's Deed No.183, Province of Auckland, pp.240-241.

[679] Rigby, 'The Crown, Maori, and Mahurangi', pp.133-134.

had purported to extinguish customary Māori interests over 'all the islands on the Coast and all the places not disposed of formerly' ('me nga motu katoa'). But as Paul Monin has observed, given that there were at least two large islands (Rangitoto and Tiritiri Matangi), and several smaller ones, within the coastal area north of Takapuna which had not been subject to pre-1840 transactions, the question as to which islands, if any, had been acquired by virtue of the 1841 deed remained unclear even to Crown officials.[680]

It would appear, in fact, that for a considerable period after 1841 officials quite rightly viewed the wording contained in the deed as simply too vague to be deemed a valid extinguishment of native title to any of the islands. In 1845, for example, John Heyd'n applied for a waiver of Crown pre-emption in order to purchase three small islands to the east of the entrance to the Mahurangi Harbour (Motuora, Motuketekete and Moturekareka) under FitzRoy's regulations.[681] George Clarke Snr., who as the purchasing agent in 1841 had presumably drafted the original deed for Mahurangi, noted with respect to this application that '[a]s these Islands were not named in the Mahurangi purchase and the Natives declare they were not included in that purchase I see no objection thereto'.[682] Governor FitzRoy, in approving the application, noted that he had 'enquired into this case carefully'.[683] Subsequent to this, when a second applicant sought a similar right to purchase two of the islands in question, Clarke further commented that he had considered these 'as belonging to the Government & included in the purchase of that place [Mahurangi], but as they were not named in the deed of purchase your Excellency gave the Chiefs the benefit of a doubt upon that subject'. If Heyd'n had not already completed his purchase of the islands, Clarke added, then he could see no reason to object to a further waiver of pre-emption in

[680] Paul Monin, 'The Islands Lying Between Slipper Island in the South-East, Great Barrier Island in the North and Tiritiri-Matangi in the North-West', (Report commissioned by the Waitangi Tribunal), December 1996, p.56.

[681] J. Heyd'n to Colonial Secretary, 26 April 1845, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16072.

[682] Clarke, minute, 5 May 1845, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16073.

[683] FitzRoy, minute, 5 May 1845, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16073.

favour of the second applicant.[684] Heyd'n had, however, already completed his purchase of the islands, which had been acquired from both 'Ngāti Paoa' and Te Hemara and his party.[685]

In December 1847 Heyd'n duly applied for a Crown grant for the islands, following which his application was considered by the Land Claims Commissioner, Henry Matson, in three separate sessions convened in Auckland between February and April 1848 under the provisions of the Land Claims Ordinance of 1846. Heyd'n informed Matson's inquiry that he had purchased the islands from Ngāti Paoa and Ngāti Rongo in 1845 and had been in undisturbed possession of these ever since, having erected a house and farm building on the largest of the islands, and having a few acres under cultivation and a considerable number of stock grazing on the lands. Witnesses from both tribes were then produced in support of Heyd'n's claims, following which Matson recommended that a Crown grant be issued for the islands.[686]

It was at this point that the government decided that the Crown did, after all, own the islands by virtue of the 1841 deed with the Hauraki tribes. In May 1848 the Surveyor General commented that:

> Previous to making out the grants I would beg leave to call attention to Mr. Clarke's report. The islands here referred to although not [illeg.] by name in the Native deed of sale to the Government, yet I consider the wording of the document sufficiently clear to leave no doubt of their transfer to the Crown.[687]

Grey accordingly informed the Colonial Secretary that:

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[684] Clarke, minute, 11 November 1845, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16073.

[685] Deed of Cession (Ngāti Paoa), 18 May 1845, (and agreement of Te Hemara and others, 23 May 1845), OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, pp.16062-16067.

[686] Proceedings of a Court Conducted under the Provisions of the Land Claims Ordinance 1846, 21 February 1848, 6 March 1848, 7 April 1848, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, pp.16046-16051.

[687] Ligar, minute, 17 May 1848, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16044.

> After perusing the translation of the Govt. deed from the natives and considering the statement of the Surveyor General, I feel precluded from affording any further facilities to the Claimant that allowing him to purchase at the price of one pound per acre (deducting any sum he may have paid to the natives) any portions of the Islands upon which he may have incurred any expenses by building or cultivations.[688]

Just to prove it meant business, in September 1848 Theophilus Heale's application to lease Motuketekete Island from the government was approved,[689] and meanwhile compensation negotiations were complicated by the fact that Heyd'n had sold half of his interests in the three islands to John Tiller and William Harding.[690] Heyd'n eventually, however, received £90 15s in compensation for his claims to the land,[691] now evidently deemed (along with other unsold islands in the area) to be Crown property by virtue of the 1841 deed with the Marutuahu tribes.

The later purchase of Rangitoto Island, estimated at 4512 acres, in 1854 could be seen as a softening of Crown claims to ownership under the 1841 deed.[692] Yet given that the deed was signed with just one individual, Ngatai of Ngāti Paoa, who received just £15 for the island, the transaction could hardly be regarded as a valid extinguishment of all customary interests to the island. F.D. Fenton later referred to the Crown relying on 'three distinct conveyances' for its title to Rangitoto when this was challenged in the Native Land Court in 1866.[693] But given that no trace of the other two deeds upon

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[688] Grey, minute, 26 May 1848, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16044.

[689] T. Heale to Colonial Secretary (and various minutes thereon), 13 September 1848, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16074.

[690] J. Tiller [to Colonial Secretary], 19 October 1850, OLC 1258, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, p.16079.

[691] Ligar, memorandum, 2 May 1850, Arch-NZ, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.27, pp.16084-16088.

[692] AUC 60, LINZ, [docs, vol.22, pp.7304-7305]; Turton's Deed No.232, Province of Auckland, pp.289-290.

[693] F.D. Fenton, *Important Judgments Delivered in the Compensation Court and Native Land Court 1866-1879*, Auckland: Native Land Court, 1879, p.22. Te Keene Tangaroa and others applied for title

which the Crown is supposed to have claimed ownership of Rangitoto would appear to exist, it would seem that the deed signed with Ngatai and the 1841 Mahurangi transaction together constitute the sum total of evidence that native title over the island was ever extinguished.[694] If that is the case then the Crown's claims to ownership of the island rest on extremely shaky foundations.

Precisely who owned what on Aotea (Great Barrier Island) was unclear to many given pre-1840 and pre-emption waiver purchases on the island, much of it unsurveyed.[695] But the Crown's objectives with respect to it were clear enough, and by two separate deeds in 1854 and 1856 remaining customary title over the southern and central portions of the island were extinguished.[696] At least one European had been in occupation of the previously unpurchased lands, leasing these from the settler who had evidently received a Crown grant for the land, despite ongoing Māori claims to ownership.[697] His agent wrote to the government in December 1853 that:

> Having been led by the representations of others to believe that the Native title of this land had long since been extinguished and that it was included in lands leased to him some years since by Mr. Abercrombie[,] Mr. Barstow expended a considerable sum in the erection of a dwelling house and other substantial improvements, & garden, orchard etc., which he now occupies entirely at the mercy of the natives...[698]

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to Rangitoto in December 1866, but their lawyer evidently withdrew the claim when this was challenged by Thomas Gillies, who appeared for the Crown. The cryptically brief (one-page) minutes of this investigation provide no indication as to the basis upon which the application was withdrawn. Native Land Court, Auckland Minute Book 1, p.41, [docs, vol.24, p.8277].

[694] In fact, some Crown officials, including both the Secretary for Crown Lands, Alfred Domett, and the former Chief Protector of Aborigines, George Clarke Snr., were unable to find any reference to the island having ever been purchased. Alfred Domett to Clarke, 1 November 1865, BBIW 4808/3b, Arch-NZ (Akl), in Stirling Supporting Documents, p.4069; Clarke to Domett, 20 November 1865, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, p.62, [docs, vol.11, p.3625].

[695] C.L. Nugent (Assistant Native Secretary) to W. Donnelly, 3 January 1852, *Epitome*, C, p.158; Donnelly to Native Secretary, 6 December 1852, *Epitome*, C, p.159.

[696] Turton's Deed No.239 (Rangitawhiri block), Province of Auckland, pp.296-297; Turton's Deed No.240 (Land on Great Barrier Island), Province of Auckland, pp.297-298.

[697] W. Connell to Colonial Secretary, 23 December 1853, IA 1/1853/2954, pp.455-457.

[698] W. Connell to Colonial Secretary, 23 December 1853, IA 1/1853/2954, pp.455-457.

The land already granted to Abercrombie was included in the August 1854 Rangitawhiri purchase, encompassing the southern part of the island, and estimated at 15,000 acres, for which the sum of £220 was paid. An undated memorandum from C.O. Davis to McLean, evidently written prior to this transaction, noted that:

> I have seen Mr. Whitaker and he informs me that Paul's claim including the portion sold to Abercrombie is upwards of 15,000 acres, and thinks that we should do well to settle the matter now. I am disposed to believe that the natives will accept £220 but should you consider this too great a sum I will endeavour to get it for less. Mr. Whitaker thinks that £200 is moderate and the entire £20 is for certain tapued places together with the foal they claimed on account of Abercrombie. The foal may be valued at £10 and £10 would be left for the tapued enclosures.[699]

McLean approved of these arrangements and later personally undertook the December 1856 purchase by which native title over the remainder of the island was extinguished. Although this second transaction, covering the central portion of Aotea and signed by members of Ngāti Maru and Ngāti Wai, involved payment in two instalments, there is no receipt with the deed to confirm the second instalment of £100 due in June 1857 was ever paid.

Native title to many of the islands in the Hauraki Gulf had now been extinguished, and in 1864 the Marine Board constructed a lighthouse on Tiritiri Matangi, prompting Matini Murupaenga, supported by Te Hemara Tauhia and others, to claim title to the island in the Native Land Court in 1866.[700] Their claim for ownership was opposed by the Crown, whose counsel argued that the Land Court had no jurisdiction, native title to the island having supposedly been extinguished by virtue of the 1841 Mahurangi deed signed with the Hauraki tribes. Chief Judge Fenton rejected this argument,

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[699] C.O. Davis to McLean, n.d. [c.1854], in AUC 254, LINZ, [docs, vol.22, pp.7345-7346].

[700] Monin, p.76.

noting that a prima facie case had been made out that the claimants held possession of Tiritiri Matangi prior to 1865 'under Maori Propriety Customs'.[701]

He had already adjourned the case twice in order to allow the Crown time to provide documentary evidence in support of its own claims on the island. That the Crown was unable to do so, even with such adjournments, was perhaps not surprising given that none of the plans of the Mahurangi purchase completed subsequent to 1841 showed Tiritiri Matangi to be within the boundaries of the purchase.[702] All that the government was left with to support it claim to title was the vague reference in the original Hauraki deed to 'all the islands on the Coast' being included within the boundaries. Yet even the purchasing officer for the Crown, George Clarke Snr., had more or less admitted in 1845 that, in the absence of any reference to specific islands, such wording could not safely be relied upon as extinguishing title to any lands.

Grilled as to why he had not advanced a claim to ownership of the island prior to this time, given the lapse of 25 years since the original transaction with the Hauraki tribes, Murupaenga noted that it was not until they saw the lighthouse that they knew the government had taken the land and in any event '[t]here was no opportunity of investigating the Case till now'.[703] That is, given the government had not taken effective possession of the island prior to 1864 there was no reason to be aware of its claims to the land and no mechanism for Māori to claim title to it themselves prior to the establishment of the Native Land Court in 1865. In these circumstances there had been little, if any, delay in advancing their claims. As Murupaenga told the Court:

> when they saw the light they knew the Govt. had taken it. They had asked to have the title investigated when they found the Island had been taken possession of without their authority. When he found it was clear he could

[701] Native Land Court, Auckland Minute Book 1, pp.89-90, [docs, vol.24, pp.8316-8317].

[702] Rigby, 'The Crown, Maori, and Mahurangi', p.84.

[703] Native Land Court, Auckland Minute Book 1, p.55, [docs, vol.24, p.8282]. See also *New Zealand Herald*, 16 March 1867, [docs, vol.24, pp.8212-8214].

> have his claim investigated he applied to the Native Land Court...there being no Court formerly.[704]

Te Hemara told the Court that he had never sold Tiritiri Matangi and '[h]ad never been asked to sell it'. He had been to the island many times since 1841, usually for short periods of time in order to collect kaimoana and catch fish.[705] Several other witnesses gave similar evidence, all of whom denied that they had sold the island or the right of 'Ngatipaoa' to have done so.[706]

Despite being subpoenaed, government officials failed to appear in Court with the original of the 1841 deed upon which the Crown staked its claim to the island, and Fenton refused to admit certified copies as evidence. That left the Crown case down essentially to the evidence of one settler who had occupied the island for six years and who testified that he had never seen Māori occupy or cultivate there, although he had frequently encountered Māori who had gone there to fish. That was entirely consistent with the claimant evidence, all of which noted that the island was no longer permanently occupied but instead used for temporary fishing expeditions. Under cross-examination, the settler, Thomas Duder, admitted that Māori had also hunted his own pigs when they visited the island but denied ever being told that these were being taken in payment for his occupation of the lands.[707] His evidence was a particularly unimpressive foundation upon which to base Crown claims to ownership of the island.

In his judgment on the case issued in June 1867, Fenton commented that the claimant case consisted 'mainly of ancient occupancy', including the fact that the ancestors of the claimants had lived on the island and been buried there, and had constructed a pā on the island, the remnants of which were still visible. Beyond this, he noted that:

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[704] Native Land Court, Auckland Minute Book 1, p.55, [docs, vol.24, p.8282].

[705] Native Land Court, Auckland Minute Book 1, pp.60-66, [docs, vol.24, pp.8287-8293].

[706] Native Land Court, Auckland Minute Book 1, pp.67-81, [docs, vol.24, pp.8294-8308]. See also *New Zealand Herald*, 16 March 1867, 19 March 1867, [docs, vol.24, pp.8212-8216].

[707] Native Land Court, Auckland Minute Book 1, pp.96-98, [docs, vol.24, pp.8323-8325].

> From the time of the Ngapuhi invasion, the ancient possessors do not appear to have ever held permanent possession of the island, nor indeed to have exercised any dominion over it, beyond acts of a very transitory nature, indicating only temporary occupation, and no intention of permanent domicile. Although the case thus made out is in itself meagre, yet it is of sufficient validity to have justified the Court in ordering a certificate of title, if no counter claimant or objector had appeared.[708]

A counter-claimant had appeared in the form of the Crown, however, and although Fenton had refused to admit a certified copy of the April 1841 Mahurangi deed in evidence – the central plank of the Crown case – he proceeded to consider the merits of the deed as extinguishing native title over Tiritiri Matangi regardless.

In Fenton's view, the deed was an entirely unconvincing basis upon which to base Crown ownership to the island. He considered it an inescapable conclusion, in considering the deed, 'that the several large islands on the far side of the ship channel, of which Tiritirimatangi is one, were never in the contemplation of the drawers or the signers of the deed', and observed that:

> The Court could not fail to be struck with the fact that no attempt was made on the part of the Crown to show by evidence that any other of these islands – some of which are much nearer to the mainland and smaller than Tiritirimatangi – were ever held, or supposed to be held, under titles derived from these transactions.[709]

Nor was Fenton impressed by the other documentary evidence submitted by the Crown. That additional evidence consisted of a report from the Land Claims Commissioner, F.D. Bell, on the claim of Henry Tayler to 1000 acres at North Head. Tayler had surrendered this claim in return for a land credit for £1000, which in November 1844 he had requested to use in respect of the whole of Tiritirimatangi and some other lands at Matakana. But although FitzRoy had approved this application,

[708] Fenton, *Important Judgments*, p.21.

[709] ibid., p.22.

no grant had ever been made out for Tiritirimatangi and Bell observed that the reasons for this were uncertain.[710] But Fenton's judgment noted that 'it was possible that the Grant was never issued, because the Government had in the interim discovered that the native title had not been extinguished'. Either way, he considered the Tayler case proved nothing more than that the government considered itself entitled to deal with Tiritiri Matangi as at 1844.[711] The Chief Judge therefore concluded that:

> The Court, then, is of opinion that the real origin of the Crown's title has not been shown, and that if the case for the Crown rested simply on the documentary evidence, it would scarcely avail to upset the claimants, although their case is undoubtedly weaker than most cases that come under our consideration.[712]

Despite this, Fenton described the facts disclosed during cross-examination of the claimant witnesses, along with direct testimony produced for the Crown, as being of 'great force, and in a case of this kind, in fact, to be of such a character as to remove from our minds the hesitation and doubt which the disclosure of the grounds of the Crown's opposition had caused us to entertain'.

Remarkably, Fenton found the evidence of Duder crucial in determining the case in favour of the Crown, along with hearsay evidence of other Europeans who had also been in temporary occupation of the island at various points in time since 1841. Yet one of the claimants had testified that the settlers to whom the pigs on the island belonged before they had been purchased by Duder had given Māori permission to hunt these,[713] suggesting at best that the arrangement was considered a mutually beneficial one and at worst that the settlers in question were there on sufferance. Either way, given that the island was being used by Māori for fishing purposes, such

[710] F.D. Bell, Report of the Court of Claims into the claim of John Logan Campbell and Ranulph Dacre, derivative from Henry Tayler, 23 June 1862, OLC 454, Arch-NZ, in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, pp.5370-5374.

[711] Fenton, *Important Judgments*, p.23.

[712] ibid.

[713] Native Land Court, Auckland Minute Book 1, pp.68-69, [docs, vol.24, pp.8295-8296].

occupation was unlikely to be have been viewed as incompatible with ongoing Māori claims to ownership. It was only when the Crown commenced constructing the lighthouse that this rival claim to ownership of the island became apparent.

On this point, Fenton, somewhat incredibly, concluded that the claimants had 'slept on their rights' in failing to submit a claim to the Native Land Court much earlier, citing their opportunity to do so under the Native Lands Act of 1862.[714] Yet that Act had only come into partial operation by 1864 – when the lighthouse was constructed on Tiritiri Matangi – with a limited trial 'Court' held in the Kaipara district, before becoming operational over the entire country in 1865. It was surely stretching credulity to suggest that the failure to file an application for investigation of title for the island until the following year meant the claimants had forfeited their claims to ownership, especially as many Māori were only just getting to grips with the highly-formalised requirements of the new Court process at this time.

Yet despite the utterly unconvincing nature of the case advanced by the Crown, and Fenton's view that the 1841 Mahurangi purchase most definitely had not included Tiritiri Matangi, he concluded that:

> Although, therefore, the Court is unable to discover the origin of the Crown's title, or by what means the native title has been extinguished, yet we are of opinion that the case made out by the claimants is altogether deficient of those elements of strength which would justify us in disturbing the Crown in its possession. To eject a person from his possession, it is not sufficient to show the weaknesses of his title, but a better must be displayed, and we think that this has not been done. Judgment must therefore go against the claimants.[715]

But if not the Mahurangi deed of 1841, what, then, does the Crown's title to Tiritiri Matangi rest upon? That question remains just as valid today as it was in the nineteenth century. Meanwhile, whether coincidental or not, the talk among

[714] Fenton, *Important Judgments*, p.24.

[715] ibid.

Auckland's business elites around the time of the Tiritiri Matangi investigation of title was that Fenton was 'under obligation' to Thomas Gillies, 'a long headed lawyer' renowned for his 'political influence & able dodging'.[716] Gillies just happened to be representing the Crown in the Tiritiri Matangi case.

This was far from the end of the matter, however, and in 1874 Paora Tuhaere petitioned Parliament for the return of Tiritiri Matangi. Tuhaere appeared before the Native Affairs Committee in August of that year, and remained adamant in his evidence to the Committee that his people had never sold the island. His suggestion that 'Ngatipaoa' had sold Tiritiri Matangi (despite, according to Tuhaere, having no rights to it) was less than convincing given the absence of any reference to the island in the 1841 deed and Fenton's emphatic rejection of Crown claims to ownership based on the original Mahurangi transaction. But perhaps the most stunning aspect of Tuhaere's evidence came in relation to the 1867 Native Land Court title determination. According to Tuhaere:

> Mr. Fenton was angry because the Assessors of Court told us that Judgment would be given in our favour, and then refused to give Judgment.[717]

This rather ambiguous statement surprisingly failed to prompt any questions from members of the Native Affairs Committee. Presumably Tuhaere meant that the Assessors (Aihepene Kaihau of Ngāti Te Ata and a second chief variously named as Tamihana Tarahoa, Hori Tauroa or Te Rahi)[718] were prepared to give judgment in favour of the Māori claimants, but Fenton had refused to convene the Court. In theory the opposite construction could be placed on this statement (that is, that Fenton wished to rule in favour of the claimants but could not persuade the Assessors),

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[716] J. Mackelvie to A. Hamilton, 11 July 1866; Mackelvie to W. Brown, 17 July 1866, J.T. Mackelvie Papers, NZMS 196, ACL, cited in Vincent O'Malley, '"An Entangled Web": Te Aitanga-a-Mahaki Land and Politics, 1840-1873, and their Aftermath', (Report commissioned by the Te Aitanga-a-Mahaki Claims Committee), September 2000, p.189.

[717] Native Affairs Committee, Minutes of Evidence of Paora Tuhaere, 21 August 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8264].

[718] *New Zealand Herald*, 19 March 1867, 8 June 1867, [docs, vol.24, pp.8215-8216, 8219-8220]; Native Affairs Committee, Minutes of Evidence of Paora Tuhaere, 21 August 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8264].

though that seems unlikely given the ultimate outcome of the case. Either way, both of the Assessors and Fenton (and the second Judge sitting on the case, H.A.H. Monro) were required by law to reach a unanimous decision in order for the Court to give judgment in any case before it.[719] In this respect, it is unclear whether the fact that neither the official minutes of the Court nor the published record of proceedings printed in the pages of the *New Zealand Herald* noted the presence of the Assessors at the time judgment was given in favour of the Crown was of any significance.[720]

Whether or not the Assessors were present, Tuhaere's evidence hinted at a degree of dissension when it came to the Tiritiri Matangi judgment which was unusual for this period.[721] That was perhaps hardly surprising given that even Fenton himself had been unable to discover the basis of the Crown's supposed title to the island. Yet the Native Affairs Committee proved unwilling to upset the Crown's title, instead wiring Fenton for further information as to the basis upon which the Tiritiri Matangi judgment had been given. Fenton, in response, simply referred the Committee to a copy of the judgment forwarded to the Native Office in 1867, at the same time adding that '[t]he island I afterwards found out fell to the crown [through] an old land claim[;] Mr. Graham has the deed of sale dated 1849 or 8'.[722] The Chief Judge was presumably referring to Robert Graham's pre-emption waiver claim, for which he received title to 20 acres at Waiwera in 1847.[723] If so, then he truly was grasping at straws, since Graham's claim made no mention of Tiritiri Matangi (or any other island for that matter). Despite this, the Native Affairs Committee reported on 27 August 1874 that:

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[719] David V. Williams, *'Te Kooti Tango Whenua': The Native Land Court1864-1909*, Wellington: Huia Publishers, 1999, p.325.

[720] Native Land Court, Auckland Minute Book 1, p.101, [docs, vol.24, p.8328]; *New Zealand Herald*, 11 June 1867, 13 June 1867, [docs, vol.24, pp.8221-8223].

[721] Tuhaere was himself highly critical of the role played by the Assessors when giving evidence on the operations of the Native Land Court to an 1871 inquiry, remarking that they had 'little or nothing to say to the cases that are being tried; they sit like dummies, and only think of the pay they are going to get'. See O'Malley, *Agents of Autonomy*, p.42.

[722] Fenton to Chairman, Native Affairs Committee, 22 August 1874 (telegram), Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8262].

[723] OLC 1094, reproduced in 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.24, pp.pp.13876-13896; Rigby, 'The Crown, Maori, and Mahurangi', pp.87-88.

> after hearing the evidence of [the] Petitioner regarding his claim, and after having communicated with the Chief Judge of the Native Land Court…the Committee cannot…recommend the prayer of the Petition.[724]

Somewhat unusually, the report was adopted only after the member for Southern Maori, Hori Taiaroa, had opposed the motion and called for a division, which he then proceeded to lose by a majority of six votes to his one.[725] Tuhaere, meanwhile, had hinted during his evidence of further unresolved grievances with respect to the Hauraki Gulf. Asked during cross-examination whether he claimed any further islands, Tuhaere pointed to Rangitoto, the island purchased from a solitary Hauraki chief in 1854.[726] But at least in the case of Rangitoto there had been some kind of acknowledgement of native title, however unsatisfactory. That was more than could be said for Tiritiri Matangi Island, the Crown's ownership of which might arguably be pointed to as a localised example of the application of the doctrine of terra nullius.

### 5.4 Whangaroa

Crown purchasing in the Whangaroa district proper commenced only in the mid-1850s, though earlier transactions in the adjacent Mangonui area (within the Muriwhenua inquiry district) from a much earlier date overlapped into Whangaroa and were to have a major impact on the communities living there. In fact, the very first Crown 'purchase' in New Zealand, the 1840 deed signed with Nopera Panakareao with respect to Mangonui, appears to have extended some way into the Whangaroa district.[727] It shared many similarities with the Crown's initial Mahurangi purchase with the Hauraki tribes. Both were major blunders on the Crown's part, involving transactions with just one party to the lands in question, which inevitably

[724] Native Affairs Committee, Report on the Petition of Paora Tuhaere, 27 August 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8261].

[725] Native Affairs Committee, Minute Book, 27 August 1874, Le 1/1874/9, Arch-NZ. [Unable to be copied].

[726] Native Affairs Committee, Minutes of Evidence of Paora Tuhaere, 21 August 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8265].

[727] See Waitangi Tribunal, *Muriwhenua Land Report*, Wellington: GP Publications, 1997, Fig.25, p.119.

inflamed tribal tensions as those excluded from the respective deals sought to assert their own customary interests in the area. Once again, the Crown's failure to conduct any sort of prior investigation of customary rights before concluding the deal, or even to convene a hui of all interested parties at which such matters could be debated, was to have long-running and significant consequences. And in the Mangonui district (unlike Mahurangi) these included armed conflict between the respective claimants to the lands.

Issues associated with the drawn-out series of dealings related to Mangonui (and associated events at Oruru) have been reported on by the Waitangi Tribunal previously, in its 1997 *Muriwhenua Land Report*. However, it is necessary to briefly re-traverse these events here, both because they form an important contextual backdrop to the subsequent transactions at Whangaroa, and because the claims of Ngāpuhi ki Whangaroa were not specifically reported on by that Tribunal.

Lieutenant-Governor Hobson, who had negotiated the deal with Panakareao personally, defended it as intended 'to restrain, in some degree, the settlers from making encroachments on the land, which has been and still is a cause of much annoyance to the natives', and believed the lands would prove 'a valuable acquisition' for the Crown.[728] Yet much of the area covered by the agreement included lands subject to old land claims, including Dr Samuel Ford's deed with Panakareao covering approximately 20,000 acres in the Oruru Valley and extending as far as Kohumaru, one of the regular residences of Pororua.[729] Although usually identified as simply a Ngāpuhi chief, Pororua also had strong links with Ngāti Kahu.[730] Either way, just as was the case at Mahurangi, both the original old land claim and subsequent Crown 'purchase' had been negotiated with only some of the parties to an area of land claimed by several different groups and actually occupied by some of them. Once again, complex tribal realities on the ground were ignored by Crown officials in

[728] Hobson to Gipps, 18 July 1840, G 36/1, Arch-NZ. [Unable to be copied].

[729] Waitangi Tribunal, *Muriwhenua Land Report*, p.93.

[730] Barry Rigby, 'The Oruru Area and the Muriwhenua Claim (Wai-45)', (Report commissioned by the Waitangi Tribunal), February 1991, p.10.

favour of a superficially appealing simpler reality which overrode the interests of those excluded from the deal and caused significant unrest in the longer-term.

Panakareao had been quickly identified as a potentially very significant ally of the Crown in the far north, and this had no doubt influenced Hobson's decision to deal exclusively with him.[731] Yet if Hobson considered that he had extinguished Panakareao's claims over the Mangonui lands by virtue of the 1840 deed, the chief, by contrast, appears to have regarded it as little more than ultimate acknowledgement of his authority over the area.[732] Although the deed itself was dated 24 June 1840, this was merely the date upon which 'a preliminary arrangement', as Hobson described it, had been entered into with the chief, without any agreed price being fixed for the lands and 'the extent of the land contained within his boundary not being clearly and accurately ascertained although well defined'.[733] The actual deed signing did not occur for a further two months, though in the interim the government's proclamation of the lands as belonging to the Crown in early July, and news of Hobson's exclusive dealings with Panakareao in respect of the Mangonui district created a sensation which threatened to spill over into almost immediate warfare.[734]

For his part, Panakareao may have been emboldened by the preliminary agreement with Hobson into thinking the Crown would now be obliged to protect him in occupation of the disputed lands. On 13 August 1840, just a few months after Panakareao's initial agreement with the governor, a number of settlers resident in the area informed readers of the *New Zealand Advertiser and Bay of Islands Gazette* that Panakareao and 250 followers armed with muskets and tomahawks had recently evacuated Mangonui, 'after an unsuccessful attempt to establish his claim to the lands

[731] ibid., pp.23-24.

[732] Waitangi Tribunal, *Muriwhenua Land Report*, pp.119-120, 217-218.

[733] Hobson to Gipps, 18 July 1840, G 36/1, Arch-NZ.

[734] For a more detailed chronology of the events at Mangonui in 1840 see David Armstrong, '"The Most Healing Measure": Crown Actions in Respect of Ororu/Mangonui, 1840-1843', n.d., Wai-45, J3, passim. Strangely, although Armstrong's report established beyond any reasonable doubt that the deed with Panakareao was not in fact signed until August 1840 his evidence on this point was ignored in the Muriwhenua Tribunal's discussion of this agreement.

of this Harbour'.[735] The authors of this letter to the editor were quite clearly not disinterested spectators, since all three of them had evidently purchased lands from Pororua or others whose customary interests had been challenged by Panakareao's subsequent deed with the Crown. They claimed that, rather than fighting, the rival parties had instead convened a hui at which the rights of the respective parties were debated at length and those of Panakareao found wanting throughout the Mangonui and Oruru districts.[736]

Their assertions were at least partly supported by the detailed report of George Clarke, prepared a short while later. Clarke had been despatched to Mangonui on 17 August 1840, evidently in response to reports of the 'angry feelings of the natives of that place' arising out of the contested claims to land in the area – inflamed in no small measure by Hobson's prior (and exclusive) dealings with Panakareao.[737] On the following day he arrived at Whangaroa, where Ururoa and Hare Hongi 'accused the Government of intentions of privately purchasing lands from parties who had but partial claims'. Clarke assured the chiefs that the government had no such intentions, but was committed to acting 'in the most open and fair way, having respect (whenever solicited by the chiefs to make purchases) to the claims of every chief', but as he reported to the Colonial Secretary:

> "Why, then," they replied, "did not the Governor and Noble tell us that was their object, when you and they visited Wangaroa in June last? The morning after you and the Governor left us, I heard that you had been purchasing land up to Wangaroa; on my hearing it, I immediately despatched a messenger after you to inform you that the parties had no claims upon Wangaroa, but I found your vessel had left before the messenger arrived." I replied, that the Governor, at the repeated solicitations of Noble Panakareao, in order to prevent quarrels amongst themselves, had agreed to purchase his claims and interests in the disputed land at Mongonui, and that Wangaroa had not been named by Noble; that I was apprehensive he had been misinformed of the

[735] *New Zealand Advertiser and Bay of Islands Gazette*, 13 August 1840, [docs, vol.18, 6179].

[736] *New Zealand Advertiser and Bay of Islands Gazette*, 13 August 1840, [docs, vol.18, 6179].

[737] George Clarke to Colonial Secretary, ('Protector's Report'), n.d. [August 1840], GBPP, 1846 (337), vol.5, p.125, [docs, vol.16, p.5468].

> intentions of his Excellency, and that his fears respecting Wangaroa had grown out of these misapprehensions.[738]

Clarke claimed that Ururoa had expressed himself satisfied with the explanation given, but had requested that a message be conveyed to Panakareao:

> that he was not to encroach upon the possessions of the neighbouring chiefs; if he did, it would lead to dispute, and perhaps to bloodshed; he (Ururoa) [sic] wished to live in peace, but he would not allow any one to encroach upon his territories.

The Chief Protector concluded that Panakareao's proceedings with respect to Mangonui had 'given great umbrage not only to themselves, but to many other of the Ngapuhi chiefs', whilst apparently being oblivious to the Crown's own role in stirring up trouble in the area.

Clarke arrived at Mangonui on 19 August 1840, where he found that Panakareao and up to 300 men had planted the British flag and protected it for five days. A meeting had indeed been held, but had been unable to reach agreement. Panakareao was unlikely to have given way in the light of what he perceived as Crown endorsement of his claims to exclusive authority over the district, whilst the other groups were equally unwilling to cede all of their interests in the lands – including their residences – to the chief. It was not surprising, therefore, that the rival groups 'parted with unfriendly feelings' or that the flagstaff Panakareao had erected as a symbol of both his authority over the lands and the Crown's endorsement of this was pulled down by Pororua's party.[739] Clarke reported that Pororua expected to be attacked by Panakareao's group, but was anxious 'that matters should not be pushed to extremities'. He assured the chief that the governor's intentions in purchasing Panakareao's interests in the lands was simply to prevent future quarrels among them and declared that 'every possible respect would be shown to his and to the claims of every other chief'. This was

[738] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.125, [docs, vol.16, p.5468].

[739] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.126, [docs, vol.16, p.5469].

certainly not how Panakareao saw matters, however, and Clarke noted that 'some liberty has been taken by Noble with his Excellency's name in support of his claims', including reference to the 'soldiers and ships of war at his command' which the chief had evidently suggested could be deployed in support of Panakareao's exclusive claims over the district.

Clarke travelled to Oruru on 21 August 1840, where he met with Pororua's eldest brother, who openly admitted that Panakareao had joint claims with them to Mangonui but complained that he had 'sold places without admitting what they considered to be their just claims'. Panakareao remained defiant, however, informing Clarke the following day that he was not prepared to admit the claims of Pororua and Ngāpuhi to any of the Mangonui district. In the light of the conciliatory Ngāpuhi position and the more uncompromising stance adopted by Panakareao, the Chief Protector concluded that:

> After duly weighing all matters connected with Noble's claim to Mongonui, and his determination to support those claims, the probable calamities resulting from the enforcement of them, both to the Europeans and the natives themselves, it appeared to me that the most healing measure would be immediately to take steps in behalf of the Crown; to pay Noble for his claims and interests in Mongonui and its vicinity; and as the sum of money I propose to pay him is not very considerable, and the object of securing peace important to all parties, I decided on drawing up a deed, making over to the Crown his claims and interests in the lands specified and set forth in the said deed, which includes all his interests to land already sold to the different Europeans now living at Mongonui, who, I am informed, have acknowledged Noble's claims by offering him considerable property, to give validity to their titles.[740]

Panakareao accordingly signed the deed drafted by Clarke on 24 August 1840, though the consideration of £100 was evidently not paid over until some time later. Clarke believed his actions were not prejudicial to the rights of others, since:

[740] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.126, [docs, vol.16, p.5469].

> the deed merely specifies his claims or interests in the lands set forth therein, and not necessarily clashing with the claims and interests of others, it honourably maintains Noble's rights and character, which was pledged in his proceedings. This opens the way for something to be done for Pororua, or any other chiefs who may have claims, and, even by the showing of Europeans themselves, the measures are just to the parties in general.[741]

Pororua, with whom Clarke met the following day, remained deeply unconvinced by this. Clarke reported that the chief was 'evidently disconcerted' by these developments, despite receiving reassurance that his own claims over the land remained untouched. 'Pororua complained of the indefinable statement of Noble, as to which or what part of the lands he claimed', Clarke reported, 'and said that if he had named a portion, and defined that portion, he might have acceded to it'. The Chief Protector naively considered that the deed signed with Panakareao would mean the chief could 'no longer visit the Europeans and natives of Mongonui in the character of a disturber; and the tendency of the whole measure will, I hope, be the establishment of an uninterrupted peace, harmony and good feeling throughout the northern tribes'.[742] He could not have been further from the truth. Rather than viewing the deed as an extinguishment of his claims over Mangonui, Panakareao saw it as a positive endorsement of his exclusive authority there. The 'most healing measure' Clarke believed he had taken was, in reality, perhaps the most harmful he could possibly have contemplated.

Under the circumstances, the subsequent deed signed with Pororua in May 1841 in response to the various appeals received merely compounded the problem. Rather than reflecting any resolution of the issues in contention, this latest deed merely offered Pororua similar terms for the extinguishment of his interests to 'all his part and that of his tribe in the Land which is mentioned and lies written in the book which

[741] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, pp.126-127, [docs, vol.16, pp.5469-5470].

[742] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.127, [docs, vol.16, p.5470].

sells the land of Nopera Panekareao [sic] to George Clarke'.[743] Pororua received £100 cash, a horse, cloak, saddle and bridle for his interests in the lands. Again there was no effort made to define those interests, and in fact the deed did not even specify the 'tribe' whose interests in the lands were also apparently being extinguished (in fact, the original text referred merely to the places of his one hapū, 'ona wahi Nga wahi ano hoki o tona Hapu'). Moreover, Clarke had specifically assured Pororua in August 1840 that 'his own cultivations in the neighbourhood...would especially be secured to him and his family for ever',[744] despite which the May 1841 deed contained no reference to any reserves.

Crown officials presumably assumed that the two deeds had, between them, extinguished the respective rights of Te Rarawa and Ngāpuhi over the lands, though neither agreement specified this – and in any event neither chief was entitled to dispose of tribal lands without the agreement of the rest of their people. Rather than easing heightened tribal tensions, the second payment to Pororua therefore merely inflamed them further. The Crown had yet to learn from its initial blunder as the Land Claims Commissioner Edward Godfrey discovered in no uncertain terms when he visited Mangonui in 1843. Godfrey arrived at Mangonui in early January of that year to investigate the various old land claims in the district, finding on his arrival that Panakareao and 250 supporters were 'awaiting my arrival in order to dispute and resist all the purchases, or pretended purchases...that were not derived from him'. Pororua arrived two days later, supported by Ururoa and other Whangaroa Māori.[745] Panakareao informed the Commissioner that he 'had a priority of right over all land in the neighbourhood of Doubtless Bay' and denied the right of any other party to sell land there without his sanction and approval. With respect to the Crown's 1840 Mangonui 'purchase', Panakareao informed Godfrey that:

> he considered the trifling property and cash given to him in 1840 by the Government for the lands in Doubtless Bay was only an earnest of what he

[743] Turton's Deeds No.1, Province of Auckland, p.1.

[744] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.127, [docs, vol.16, p.5470].

[745] Edward L. Godfrey to Colonial Secretary, 15 January 1843, *Epitome*, B, p.6.

> was to receive for these lands, Pororua having received as much, although he had disposed of his rights to, and received payment from, the settlers. This purchase by the Government not having been completed according to his view of the matter, he thinks that the amount he has already received is only a fair equivalent for the feast given by him at Kaitaia upon the late Governor's arrival there.[746]

Panakareao assured the settlers that they would be permitted to continue occupying the lands in question unmolested until the whole matter had been arranged, but added the ominous warning that he would maintain his rights over the lands by force of arms if necessary. Godfrey reported that other Māori had opposed Panakareao's transaction with Ford 'and with more show of justice, because these lands have been their dwelling-places for very many years'. Panakareao remained obstinate in his refusal to countenance any further recognition of the rights of others at Mangonui and Oruru (beyond his earlier back-handed statement that Pororua's rights had already been disposed of), with Godfrey reporting that he had :

> proposed divers modes of arranging their differences to these chiefs, but without effect, Nopera being the most determined in resistance. He considers that the offer, as he calls it, of the Government in 1840 to purchase his rights over the heads of the Europeans already settled upon these lands was an absolute confirmation and admission of his title.[747]

Nearly a month later, Godfrey reported that he had continued to try and obtain from Panakareao an admission of the outright sale of his lands to the government in 1840, 'but there appears to have been so strange a misunderstanding altogether with respect to this purchase, that its assertion was of no benefit to me in the dispute'.[748] The Commissioner, with his limited knowledge of Māori society, may have naively assumed that the 1840 deed constituted clear evidence that Panakareao's rights at

[746] Godfrey to Colonial Secretary, 15 January 1843, *Epitome*, B, p.7.

[747] Godfrey to Colonial Secretary, 15 January 1843, *Epitome*, B, p.7.

[748] Godfrey to Colonial Secretary, 10 February 1843, GBPP, 1845 (369), vol.4, p.74, [docs, vol.16, p.5415].

Mangonui had been extinguished, but from the chief's perspective the deed had merely confirmed his existing and continuing authority over the lands.

At this point Godfrey proposed that the question of title should be set at rest by a compromise agreement under which the west side of the Mangonui Harbour would be acknowledged as under the control of Panakareao and his party and the east side similarly recognised as the domain of Pororua and his people. After much hesitation, Pororua's party eventually agreed to accept such an arrangement, but Panakareao objected to it, 'and he continued in this obstinate mood, rejecting all attempts at accommodation; insisting vehemently upon his absolute right and title to the whole of the purchased lands'.[749]

When Godfrey travelled to Kaitaia he reported that 'many violent and seditious speeches were made by Nopera and other chiefs', in which they repudiated the purchase made from Panakareao in 1840 and insisted that 'all their ancient rights and authority, of every description' would continue to be exercised as before, free of government interference.[750] Although the Kaitaia gathering eventually agreed to accept the Commissioner's proposed compromise,[751] Pororua and his party now rejected the arrangement and declared that they were not willing to compromise in the matter. Godfrey believed that this change of feeling may have arisen as a consequence of offers of assistance subsequently received from Ngāpuhi chiefs from the Bay of Islands.[752] Just as likely, however, Panakareao's vehement rejection of the proposal when both parties were gathered together at Mangonui, following its grudging acceptance by Pororua and party, had not gone down well with local Ngāpuhi.

Accepting defeat, Godfrey declared that he could 'do no more in the affair', and suggested that George Clarke, who had been responsible for completing the initial

[749] Godfrey to Colonial Secretary, 10 February 1843, GBPP, 1845 (369), vol.4, p.74, [docs, vol.16, p.5415].

[750] Godfrey to Colonial Secretary, 10 February 1843, GBPP, 1845 (369), vol.4, p.74, [docs, vol.16, p.5415].

[751] H.T. Kemp to Clarke, 10 February 1843, GBPP, 1845 (369), vol.4, p.75, [docs, vol.16, p.5416].

[752] Godfrey to Colonial Secretary, 10 February 1843, GBPP, 1845 (369), vol.4, p.74, [docs, vol.16, p.5415].

transactions with Panakareao and Pororua in 1840-1841, be sent back to endeavour to effect a reconciliation between the parties as soon as possible. Clarke was accordingly instructed 'to investigate into this misunderstanding relative to the land purchased by him for the Government' on 20 March 1843. Willoughby Shortland, the officer in charge of the government, further instructed that Clarke should take the original deed with him and show 'the chief' (evidently Panakareao) his signature to it, as 'he could not have understood the nature of the document'.[753] What this rather feckless gesture was designed to achieve is not immediately obvious given that armed conflict had already broken out between the disputant groups by the time that Clarke had received his orders. A worthless piece of paper which had only served to provoke inter-tribal warfare was not now going to matter a jot in resolving the clash which its authors had inadvertently and so incompetently fired up.

By the time that Clarke had reached the Bay of Islands on 24 March 1843 a temporary halt to hostilities had been called. Clarke attended a large hakari of the Ngāpuhi tribe at Kerikeri, attended by more than 1500 people, where he was assured that:

> they had no intentions to perpetuate the quarrel, provided they could amicably settle their differences; they had sent messengers to Oruru to say that peace should immediately be made if the Rarawa tribes would cease to maintain their exclusive right to Oruru, a place which they, the Ngapuhis, had had peaceable possession of more than 20 years, and obtained from the Rarawa by conquest. There was, they observed, a natural boundary, namely, the river Oruru; their terms of peace were, that the east side of that river should form the Ngapuhi boundary line, and the west side that of the Rarawa; that if these reasonable proposals were acceded to, they would proceed no further; but that, if they were rejected, they, the Ngapuhis, would proceed to maintain their position by force of arms.[754]

Clarke believed there was 'great plausibility' and 'much apparent justice' in the terms proposed by Ngāpuhi. When he visited Oruru, the scene of the recent conflict, the

[753] W. Shortland, minute, 20 March [1843], GBPP, 1845 (369), vol.4, p.76, [docs, vol.16, p.5417].

[754] Clarke to Colonial Secretary, 1 June 1843, GBPP, 1846 (337), vol.5, p.109, [docs, vol.16, p.5450].

Ngāpuhi chiefs there immediately consented to the terms proposed at Kerikeri, but Panakareao 'rejected them with contempt, declaring that he would not agree to the Ngapuhis having any part of Oruru'. The Chief Protector added that he had:

> urged in vain the right of conquest, and undisturbed possession for a number of years. Noble was unflinchingly obstinate and unsparing in his remarks respecting the Government and those who interfered in his concerns, and considered every one his enemy who named the dividing of Oruru; even his spiritual instructors shared in the same odium for proposing such terms of peace.

Clarke then warned that if the disputant parties did not settle their conflict quietly it would be left for the government to do it for them, and that it was impossible for the Queen to allow them to make war in her dominions. The Chief Protector thought such advice might dispose Panakareao to be more conciliatory, and meanwhile drafted peace terms essentially endorsing the Oruru River boundary proposed at the Kerikeri hakari. Panakareao, however, 'continued inflexible, and continued to treat every intimation given him of the displeasure of Her Majesty's Government at his conduct, in this as well as the Mongonui affair, with insult'.[755]

Clarke reported that the main body of Ngāpuhi had arrived at Oruru only 'in time to see the defeat of the Rarawas', following Panakareao's deliberately provocative gesture in passing within the proscribed boundary lines of a Ngāpuhi pā commanded by Hone Heke. Although total casualties throughout the conflict amounted to no more than 16 dead, and both sides went out of their way to avoid excessive bloodshed given the close kin relationships between them,[756] Clarke added that:

> What would have been the loss of the Rarawa, had not the Ngapuhi been restrained by friendly natives, Moses Tawai [sic] and others, it is impossible to conjecture; the arrival of the main body of the Ngapuhis, had they been

[755] Clarke to Colonial Secretary, 1 June 1843, GBPP, 1846 (337), vol.5, p.110, [docs, vol.16, p.5451].

[756] Clarke to Colonial Secretary, 1 September 1845, GBPP, 1846 (337), vol.5, p.124, [docs., vol.16, p.5467].

> hostile, would have completely routed the Rarawa; but it was evident from their conduct that they only wished honourably to maintain their claim to Oruru.[757]

Immediately upon the arrival of the Ngāpuhi party a deputation was despatched to the Rarawa chiefs to propose terms of peace based on the proposed division of the lands at Oruru. Panakareao refused to meet with any of the deputation, however, and rejected the proposed terms of peace. The Chief Protector reported that although 'there was a disposition for peace' among Ngāpuhi, 'Noble seemed possessed of a spirit of infatuated obstinacy to maintain Oruru at all risks, despite the fact that he had 'no just claim on the place' as a consequence of his pre-Treaty transaction with Ford. When reminded of this fact, Panakareao professed himself 'perfectly indifferent as to the views the Governor might take', adding that he had applied to the government to put him in possession of both Oruru and Mangonui, 'but to no purpose; and that in consequence he should adopt his own measures, quite independent of the Government'.[758] Clarke believed that Panakareao had been 'altogether defeated in his endeavours to maintain an exclusive right to Oruru, and his pride is deeply wounded'. Pororua and his party had succeeded in compelling Panakareao to abandon Oruru, and the Ngāpuhi party had themselves left the place, but peace was in a great measure dependent upon neither party returning to occupy it.

Although Clarke's contemporary report represented the results of this conflict as a major setback for Panakareao in his quest to assert exclusive rights of authority over the Oruru lands, moderated only by the desire of Ngāpuhi to restore peace to the area, some two years later he portrayed matters in a rather different light. In June 1844 Walter Brodie, a local settler, had presented blistering evidence to the House of Commons Select Committee on New Zealand, condemning George Clarke, in particular, as being principally responsible for the bloodshed the previous year as a consequence of his foolhardy decision in 1840 to recommend that the governor purchase the lands from Panakareao, despite the chief having no valid claims on the

[757] Clarke to Colonial Secretary, 1 June 1843, GBPP, 1846 (337), vol.5, p.110, [docs, vol.16, p.5451].

[758] Clarke to Colonial Secretary, 1 June 1843, GBPP, 1846 (337), vol.5, p.111, [docs, vol.16, p.5452].

district.[759] Seeking to defend himself from these grave charges (which were reported in *The Times* newspaper in London), Clarke wrote in September 1845 that Panakareao had evacuated Oruru 'not in consequence of having been defeated' but in compliance with the agreement that both parties should leave the district in order to preserve the peace.[760] Moreover, the 1840 deed with the chief had, Clarke asserted, merely acquired Panakareao's interests in the lands without prejudice to those of any other party. Panakareao and his people had 'never [been] driven entirely away from the district of Mongonui, but continued to cultivate in the presence of their enemies; consequently, according to the universally acknowledged principles of native law, they still held (although worsted and forced to retreat temporarily before the invaders) a legitimate claim upon the district'.[761]

Regardless of the actual rights of the various claimants to Oruru, the tentative peace established in 1843 was dependent on neither party re-occupying the lands there. The Northern War changed everything. A small group of Ngāpuhi from Whangaroa fought on the anti-government side, whilst the majority of chiefs from there remained officially neutral (though suspected of supporting the 'rebel' forces).[762] Nopera Panakareao and 14 others from Te Rarawa meanwhile fought alongside Crown forces at Ruapekapeka in January 1846.[763] They were jeered upon their return to Kaitaia.[764] But if the cause was far from a popular one, some (including Governor FitzRoy) suspected that Panakareao's primary motivation for getting involved had been the crucial role played by Hone Heke in the 1843 conflict at Oruru.[765] It would appear that there was more than just utu at stake, however, given that Grey had evidently

[759] Evidence of Walter Brodie, 4 June 1844, Minutes of Evidence of the Select Committee on New Zealand, GBPP, 1844 (556), pp.28-31, [docs, vol.15, pp.5071-5074].

[760] Clarke to Colonial Secretary, 1 September 1845, GBPP, 1846 (337), vol.5, p.125, [docs., vol.16, p.5468].

[761] Clarke to Colonial Secretary, 1 September 1845, GBPP, 1846 (337), vol.5, p.124, [docs., vol.16, p.5467].

[762] Phillipson, pp.356-359.

[763] Rigby, 'The Oruru Area and the Muriwhenua Claim', p.32.

[764] Waitangi Tribunal, *Muriwhenua Land Report*, p.184.

[765] Angela Ballara, 'Pana-kareao, Nopera, ?-1856', DNZB, vol.1, p.328.

promised to support Panakareao's claims to Oruru in return for the military assistance offered.[766]

The governor had travelled to Northland in May 1846.[767] Upon meeting with Panakareao, Grey had reportedly informed the chief that coal deposits had been discovered in the area, as a consequence of which Mangonui was likely to become a significant township. He therefore urged Panakareao 'and his Natives to plant at Oruru, in order to supply them, ie the miners with food'.[768] Grey could not have been unaware of the huge conflict over land rights at Oruru which the Crown's prior dealings had engendered. Clearly the Ngāpuhi hapū of Whangaroa were to be punished for failing to support the Crown during the recent war (or in some cases actively fighting against it) through Grey's more or less open endorsement of Panakareao's claims on the land. Whether either Panakareao or the Crown would be in a position to enforce his exclusive authority over the Oruru lands should Ngāpuhi choose to contest this was another matter, though in the post-Northern War context (and with Grey's support for Panakareao) any effort to actively oppose the chief's claims risked being conflated with a further outbreak of 'rebellion' in the north.

Panakareao's re-occupation of the Oruru lands soon after the end of the Northern War therefore did not provoke the type of response it might have been expected to just a few years earlier. This is not to say that Panakareao's claims to exclusive authority over the Oruru lands did not continue to be disputed by others. Indeed, in 1852 Ngāti Kahu under Tipene Te Taha fought a small battle with Panakareao's supporters at Oruru in which one person was killed.[769] In 1853 the Mangonui Resident Magistrate reported that there would be 'no obstruction on the part of the natives' to placing settlers on the Oruru lands, with 'all acknowledging the land to belong to

[766] Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p.1, [docs, vol.12, p.3861]; Kemp to McLean, 12 April 1856, AJHR, 1861, C-1, p.7, [docs, vol.12, p.3864].

[767] Grey to Stanley, 20 May 1846, GBPP, 1847 (763), vol.5, pp.17-18, [docs, vol.16, pp.5569-5570].

[768] Joseph Matthews, Journal, 26-29 May 1846, cited in Barry Rigby, 'Empire on the Cheap: Crown Policies and Purchases in Muriwhenua 1840-1850', (Report commissioned by the Waitangi Tribunal), March 1992, p.77.

[769] Rigby, 'The Oruru Area and the Muriwhenua Claim', p.33.

Government'.[770] Just over a year later, however, White informed the Surveyor General that he had, without prior authority from the government, purchased Oruru from Panakareao for £100 and a 100-acre reserve where his pā was located, 'in consequence of several gentlemen who have made choices in the valley...and are of course desirous of knowing that there will be no obstacle to their accepting their claims'.[771]

In fact, White had been so anxious to purchase the lands supposedly previously purchased from Panakareao by both Dr Ford in 1839 and the Crown itself in 1840 that he had advanced the sum of £100 to the chief out of his own pocket. McLean, to whom this correspondence was referred as the new head of the Land Purchase Department, believed the transaction a 'judicious' one, which would allow the lands in question to be thrown open for settlement without further delay. Noting that the land in question encompassed Ford's claim, he assumed that 'the present payment finally extinguishes the Native Title'.[772] White's deed had reflected similar sentiments, declaring that Panakareao's claim to Oruru was 'the only native claim existing' with respect to the lands in question.[773]

Yet privately H.T. Kemp was warning McLean of a rather different reality. In September 1854 Kemp noted that White's purchase was 'attended with some difficulty, in reference to the claims of the young Chiefs'. White had evidently still to be reimbursed for the £100, since Kemp added that '[h]ad it not been for this, I think I should have repaid him the £100 he advanced, out of our funds'. There were, Kemp added, 'several applicants for lands there; but I think, from what White says, that Nopera is inclined to repudiate his own transaction'.[774]

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[770] White to Colonial Secretary, 27 May 1853, IA 1/1853/1289, Arch-NZ, [docs, vol.24, pp.8231-8232].

[771] White to Surveyor General, 3 July 1854, Surplus Lands Commission File N, Oruru Petition, reproduced in Rigby, 'The Oruru Area and the Muriwhenua Claim', Appendix C.

[772] McLean, minutes [two of same date], 28 July 1854, Surplus Lands Commission File N, Oruru Petition, reproduced in Rigby, 'The Oruru Area and the Muriwhenua Claim', Appendix C.

[773] Turton's Deed Receipt No.1, Province of Auckland, p.715.

[774] Kemp to McLean, 16 September 1854, McLean Papers, typescript, vol.12, MS-1317, ATL, [docs, vol.9, p.2702].

In December 1854 Kemp further reported that 'Pororua, a nephew of Hongi Hika, has come down [to Auckland] expressly about Mr. White's purchase at Oruru. The Colonel has stopped the survey in consequence'.[775] Already, in November 1854, Johnson, who had prior experience in endeavouring to paper over the cracks of bungled Crown purchases from his time in the Mahurangi district, had been instructed to investigate the claims to Oruru advanced as a result of the latest blunder. His report, completed in February 1855, confirmed well and truly that Panakareao's was not the only claim on Oruru and that a number of other groups maintained an interest in the lands there. Johnson noted that the Oruru Valley was part of the 'tract of debateable ground which usually lies between the possessions of every two great Tribes in New Zealand', and had been a bone of contention between 'the two great divisions in the North, the Ngapuhi and the Rarawa' for many generations past.[776]

Johnson's report was the first to note the existence of other claimants to the lands, observing that besides Ngāpuhi and Te Rarawa, 'another party have now appeared, headed by a young man named Tipene, of the Ngatikahu Tribe, the original possessors of the land in question who were formerly on the side of the Rarawa, taking part with them against Ngapuhi in 1842 [sic – 1843]'. They had, he added, 'now quarrelled with their late Chief Noble, and are urging their claims under the auspices of Tamati Waka'. Johnson claimed that 'all parties partook more or less' of the payments made by Ford in 1839 and had the lands been taken possession of at that time as 'surplus' reverting to the Crown, it was probable there would have been few difficulties. The spilling of blood at Oruru and loss of life on both sides had changed matters significantly, 'and not being able to agree' on their respective rights both parties had by mutual consent agreed to abandon Oruru. Panakareao had been 'the first to return to the contested ground, with the sanction, he affirms, of the Government, in consideration of the services he rendered in the war against Heke'. These circumstances had, Johnson admitted, 'led to a complication of Native

[775] Kemp to McLean, 9 December 1854, McLean Papers, typescript, vol.12, MS-1317, ATL, [docs, vol.9, p.2708].

[776] Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p.1, [docs, vol.12, p.3861].

difficulties', and as the land was required for the location of settlers, Panakareao's claims had been extinguished by the deed signed with White a year earlier.[777]

Johnson now believed that a further £300 would be required to extinguish the remaining Māori claims on Oruru, £150 of which would be required for Pororua and the claims of Hokianga Māori, £100 to Ngāti Kahu and a further £50 to other Te Rarawa claimants who had (presumably) not received a share of the payment made to Panakareao in 1854 and certainly had not been party to that transaction. Johnson added that some of the various claimants had proven 'very insolent in their demands' and had proposed referring their cases to 'a higher authority in Auckland'.[778] Tipene's claim on behalf of Ngāti Kahu had received support from perhaps the most useful ally in the north, in the form of Tamati Waka Nene, who did indeed appear at the Land Purchase Department in May 1855 to urge that their claim was the equal of Pororua's and should accordingly also receive £150. Kemp recommended that the additional £50 be granted on condition that if the request was approved Tipene's party should pledge themselves to make no further claims upon the government for the lands in question.[779] Pororua, meanwhile, had also fired off a series of letters to Auckland advancing the claims of his people, whilst Panakareao had exerted pressure in the opposite direction by refusing to finalise a number of unrelated transactions whilst the Oruru business remained unsettled.[780]

In the face of these various agendas, the government's initial response appears to have been one of paralysis. It was only when the disgruntled claimants began threatening direct action that Crown officials began to take matters more seriously. In January 1856 White reported that Pororua:

> who has a claim on Oruru and who was awarded £150 by Mr. Commissioner Johnson, came to me yesterday, and in a very insolent manner announced his

[777] Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p.1, [docs, vol.12, p.3861].

[778] Johnson to McLean, 23 February 1855, AJHR, 1861, C-1, p.1, [docs, vol.12, p.3861].

[779] Kemp, memorandum, 4 May 1855, AJHR, 1861, C-1, p.2, [docs, vol.12, p.3862].

[780] Rigby, 'The Oruru Area and the Muriwhenua Claim', p.38.

> intention of cultivating at Oruru on Mr Campbell's land. He is a violent insolent Native, a rival of Noble's at Oruru but has never been permitted by Noble to go near the place since the War between them in 1843.[781]

Kemp, meanwhile, informed McLean privately in March 1856 that:

> the outstanding native claims have never been set at rest & the land has been sold and occupied by Settlers. This should be attended to before any thing serious happens. The Natives are very loud in their complaints. I think £350 would set this at rest if handled at once.[782]

In April 1856 Kemp again urged a prompt settlement to the Oruru claims, evidently believing that this would lessen opposition to further acquisitions in the north, including the fertile Victoria Valley (Takahue), which had long been a focus of Crown attentions.[783] His own report on the situation at Oruru, dated 12 April 1856, criticised Ford's original transaction, noting that there were 'two distinct parties, resident owners, headed by their respective chiefs, Noble and Pororua', but that 'the purchase seems to have been defective, inasmuch as Noble's party alone received the bulk of the property paid by Mr. Ford'.[784] Pororua had consequently 'repudiated the sale in so far as his claims to half of the valley were concerned', and had taken issue with Panakareao before Godfrey in 1843, following which the subsequent war had ended with Panakareao 'giving up the contest, with considerable loss in killed and wounded'. Pororua had retired to Whangaroa and Oruru had been considered neutral ground after 1843, until Panakareao 'received Sir George Grey's sanction to return to Oruru for his services during the rebellion' as a consequence of which he had renewed his claims to the land. A sum of up to £4000 had been realised by the sale of the lands to settlers following the 1854 deed with Panakareao, but both Pororua and Tipene had

[781] White to Colonial Secretary, 31 January 1856, IA 1/1856/336, Arch-NZ, [docs, vol.3, p.779].

[782] Kemp to McLean, 10 March 1856, McLean Papers, folder 368, ATL, [docs, vol.24, p.8455]. Emphasis in original.

[783] Kemp to McLean, 11 April 1856, AJHR, 1861, C-1, pp.6-7, [docs, vol.12, p.3864]; Waitangi Tribunal, *Muriwhenua Land Report*, pp.303-304.

[784] Kemp to McLean, 12 April 1856, AJHR, 1861, C-1, p.7, [docs, vol.12, p.3864].

continued to urge their claims to a portion of the land sold. Kemp now believed a sum of £200 cash or £150 plus a 100-acre reserve would meet the demands of Pororua and his party, whilst a further £150 was required for Tipene, 'representing Moetara, Busby, and other northern tribes'. He believed, however, that it would be 'very desirable...to avoid' Pororua's occupation of Oruru and considered 'payment of the money...the most satisfactory means of removing the present serious difficulties, and setting the question at rest'.[785] By way of illustrating the urgency of the situation, Kemp enclosed a February 1856 letter from Te Hira and others of Taipa, threatening to 'take Oruru back' if the £150 which had twice been adjudged their due compensation was not received.[786]

White sounded his own note of urgency in June 1856, when he informed McLean that:

> Tipene is constantly at variance with the people of Oruru, and is making vigorous efforts to return to settle there. Pororua the same. Between the two, the settlers are kept in a constant state of excitement, and a sense of insecurity very much cripples their enterprise. Moreover, a portion of Mr. Campbell's land has been occupied, but I cannot interfere in consequence of the unsettled question of payment.[787]

At the end of August 1856 McLean finally forwarded Kemp authorisation to 'take immediate steps for the final extinction' of the claims to Oruru, though on the basis of Johnson's original recommendation that £300 was required for this rather than his own more recent suggestion that £350 be expended to ensure Pororua was left without any land in the district. McLean also believed it imperative that Pororua should not receive any reserves at Oruru but simply wanted Kemp to try and effect this for no

[785] Kemp to McLean, 12 April 1856, AJHR, 1861, C-1, p.8, [docs, vol.12, p.3865].

[786] Te Hira and three others to the Governor, 6 February 1856, AJHR, 1861, C-1, p.8, [docs, vol.12, p.3865]. For a translation of the letter see Surplus Lands Commission File N, Oruru Petition, reproduced in Rigby, 'The Oruru Area and the Muriwhenua Claim', Appendix C.

[787] White to McLean, 25 June 1856, AJHR, 1861, C-1, p.9, [docs, vol.12, p.3865].

additional payment, though authorising the expenditure of the additional £50 if this was the only way that the objective could be achieved.[788]

Kemp reported early the following month that the death of Panakareao, 'whose assistance was very beneficial to the Government', had altered matters, and although he remained hopeful of settling the matter a further £200 would be required in addition to the £300 already advanced him 'to meet any new difficulties that may arise'. A quick response was now critical, he suggested, due to the fact that 'the *planting season has already begun*, and the difficulties that generally follow, when the Natives obtain a firm footing on the land'.[789] McLean refused to authorise the additional £200 requested, despite which on 29 September 1856 Kemp was able to report that 'the outstanding claims to the Valley of Oruru have been finally and amicably disposed of...to the satisfaction of the whole of the Natives concerned'. Pororua had, Kemp noted, for several days insisted upon having a 100-acre reserve on the same terms as the late Panakareao and had already begun cultivating on it, but eventually agreed to accept an additional £50 in lieu of this, taking the total consideration allotted to him to £200. Others of his group, occupying a small area of cultivations, had also agreed in writing to leave the ground as soon as they had removed their crops.[790]

Panakareao's long-standing ambition to remove the Ngāpuhi presence from Oruru was thus, somewhat ironically, to be achieved by the Crown, shortly after the chief's demise. The deed itself, signed by 37 chiefs on 17 September 1856, purported to be 'the last and complete payment for the valley of Oruru'.[791] Only Te Rarawa and Ngāpuhi were referred to in the agreement, with Ngāti Kahu's fleeting recognition from the Crown now evidently abandoned. Their chief, Tipene, was also evidently

[788] McLean to Kemp, 29 August 1856, AJHR, 1861, C-1, p.10, [docs, vol.12, p.3866].

[789] Kemp to McLean, 7 September 1856, AJHR, 1861, C-1, p.11, [docs, vol.12, p.3866]. Emphasis in original.

[790] Kemp to McLean, 29 September 1856, AJHR, 1861, C-1, p.12, [docs, vol.12, p.3867].

[791] Turton's Deed No.3, Province of Auckland, pp.3-4.

expected to share the measly £50 share of the purchase money he had received with Hokianga Te Rarawa who had not attended the signing.[792]

Given the unclear boundaries described in the deed, the absence of any plan attached to it, and the failure to survey the block until 1858, the potential for misunderstandings remained high. Crown officials may have assumed that this latest deed had finally extinguished any residual Māori claims over the Oruru Valley (with the exception of the 100-acre reserve set aside for Panakareao's family in 1854 – the next target for acquisition) but this does not appear to have been how local tribes viewed the matter. In December 1856 White reported that a pair of local traders were encouraging Māori to repudiate the transaction.[793] Meanwhile the claim of Hokianga Māori for 'a further payment for Oruru',[794] though supported by White, was rejected by Pororua, who evidently did not share the view that his rights over the Oruru Valley had been extinguished in September 1856.[795] Indeed, by 1863 the wheel had turned full circle as Pororua received a £100 payment for his interests at Mangonui, just as he had back in 1841. Besides being largely incomprehensible, this latest deed did little, as the Muriwhenua Tribunal observed, to persuade Pororua that he had parted with all interests in the land forever.[796] In that sense, too, things had changed little since 1841.

From the Crown's perspective, however, the 1856 'settlement' of the various claims to Oruru had always been viewed as the key to unlocking a much broader expanse of lands within the Whangaroa and Muriwhenua districts to alienation and settlement by Europeans.[797] In fact, within three months of the September 1856 transaction, two further deeds had been signed with respect to lands within the Whangaroa district – the first Crown purchases in the area ever, with the exception of the overlapping Oruru/Mangonui deeds discussed previously. Kemp had reported to McLean in April

[792] McLean to Kemp, 11 December 1856, AJHR, 1861, C-1, p.15, [docs, vol.12, p.3868].

[793] Rigby, 'The Oruru Area and the Muriwhenua Claim', p.45.

[794] McLean to Kemp, 11 December 1856, AJHR, 1861, C-1, p.15, [docs, vol.12, p.3868].

[795] White, memorandum, n.d. [c.March 1857], AJHR, 1861, C-1, p.19, [docs, vol.12, p.3868].

[796] Waitangi Tribunal, *Muriwhenua Land Report*, pp.251-252.

[797] Rigby, 'Toitu Te Whenua E', p.125.

1856 that two blocks of land, Whakapaku and Taraire, on the northern and southern sides respectively of Whangaroa Harbour, had been offered to him. He had examined both blocks and ascertained the boundaries as pointed out by the owners. Whakapaku, on the northern side, was, he reported, 'chiefly open land, with scattered portions of forest, is well adapted for grazing, is easily accessible from the Port of Mangonui, would be very soon occupied as sheep runs, and joins land exchanged by private owners with the Government'. Kemp estimated the block to contain about 3000 acres and believed it could be purchased for £300.[798] The second block, Taraire, comprised both open and forest lands, including 'some very fine kauri', and was accessible overland from the Bay of Islands or by water from Whangaroa Harbour. It also contained 'good natural boundaries, no Native Reserves, is adapted for grazing or agricultural purposes; would furnish some very fine spars; adjoins land which is already in the hands of the Government' and would form 'altogether a compact and valuable estate'. Kemp estimated the area offered at 3000 to 4000 acres, for which a sum of £350-400 might be required in consideration.[799]

The Commissioner named the 'principal Chiefs concerned in these sales' as Tamati Waka, Ururoa, Hongi, Kingi Wiremu Hakiro, Pakira, 'the sons of the well known Te Puhi, and several inferior persons'. Both blocks had been 'offered many months since', Kemp added, and negotiations had been progressing steadily, without any obvious difficulties.[800] By August 1856 Kemp had evidently received no response to his earlier request for authorisation to proceed with the transactions, writing again to McLean to seek authorisation to purchase the two blocks at a total price of £700, and 'leaving it to the Native owners to decline the offer, which is not unlikely when compared with their present large expectations'. Both blocks would be 'a valuable acquisition to the Government', Kemp added, 'and the sums recommended are, I think, as low as they could be made to meet the several claims'.[801]

[798] Kemp to McLean, 13 April 1856, AJHR, 1861, C-1, p.8, [docs, vol.12, p.3865].

[799] Kemp to McLean, 13 April 1856, AJHR, 1861, C-1, p.8, [docs, vol.12, p.3865].

[800] Kemp to McLean, 13 April 1856, AJHR, 1861, C-1, p.8, [docs, vol.12, p.3865].

[801] Kemp to McLean, 13 August 1856, AJHR, 1861, C-1, pp.9-10, [docs, vol.12, pp.3865-3866].

In October 1856 McLean finally responded to Kemp's letters, informing him that 'the price is considered by the Government to be excessively high, and, that as a general rule, the purchase of such small blocks should be avoided as entailing great expense in the purchase and survey, which might be obviated by treating in a more general manner for a considerable extent of country'. Nevertheless, the Chief Commissioner felt assured that Kemp's 'object in recommending these preliminary purchases is with the view of ultimately acquiring larger tracts of country, and of unlocking some of the valuable waste lands of your district'. McLean accordingly informed Kemp that it was only on this basis that he had been induced to sanction completion of the purchases on the terms proposed by Kemp.[802]

The terms originally proposed by Kemp and grudgingly approved by McLean on the 'thin end of the wedge' principle equated to just two shillings per acre based on the original estimates of the area of the two blocks. Privately, Kemp reassured McLean that he had taken on board the 'hints as to economy' when it came to the prices offered Māori for their lands.[803] The Chief Commissioner must have been happy, therefore, to learn that Kemp had managed to reduce the prices paid for both blocks. Taraire, estimated at 2700 acres, was purchased for just £300 on 22 December 1856, with a 270-acre reserve and two urupā being set aside for the owners.[804] Whakapaku, for which a deed was signed on the same date, estimated at 2688 acres in the sketch plan accompanying the deed, was purchased for £200.[805] Two reserves, Motukahakaha and Taupo, were set aside out of this transaction. Motukahakaha was estimated at 180 acres, but Taupo was curiously described as being 800 acres in extent in the Māori text of the agreement but just 400 acres on both the sketch map and in the English translation of the agreement.

[802] McLean to Kemp, 3 October 1856, JHR, 1861, C-1, pp.12-13, [docs, vol.12, p.3867].

[803] Kemp to McLean, 29 September 1856, McLean Papers, folder 368, ATL, [docs, vol.10, p.3123].

[804] AUC 44, LINZ, [docs, vol.22, pp.7278-7285]; Turton's Deed No.32, Province of Auckland, pp.46-47, in Berghan Supporting Papers, vol.6, pp.3460-3461].

[805] AUC 43, LINZ, [docs, vol.22, pp.7270-7277]; Turton's Deed No.31, Province of Auckland, pp.45-46, in Berghan Supporting Papers, vol.6, pp.3459-3460.

In the event, neither estimate was correct. In fact, Motukahakaha contained 494 acres and Taupo 2510 acres, meaning that they were larger than the area the Crown had purported to purchase![806] Not that the Crown was the loser by this, far from it. In fact, upon survey the Whakapaku block was found to have contained 12,332 acres, meaning that despite Kemp's original estimate that two shillings per acre would be required to purchase the block, the Crown had got it for less than four pence per acre.[807] How both Kemp, the purchase agent, and White, the initial surveyor,[808] could have underestimated the extent of the block by more than 75% defies imagination, though it must surely cast doubt on the credibility of other contemporary block area estimates provided by the pair. Uncertain boundaries undoubtedly contributed to such an outcome. White complained to McLean in March 1857:

> I am quite in despair about the surveys – all the points of any importance were fixed with the theodolite in the 2 Wangaroa blocks, I don't know how I shall find time to survey and cut the lines of the outer boundaries – it would take me at least 2 months and the labour of two natives is not enough for such work [as] a great deal of it is thick forest.[809]

Meanwhile, T.H. Smith informed McLean in July 1857 that:

> Last week we had W. Tipene Ahuahu and another native from the North demanding to see the Governor for the purpose of preparing a claim to the lands at Mangonui and complaining of having been passed over by Mr. White in the recent purchase of the Whakapaku block. I hesitated to take them to the Governor for such a purpose assuring them that H.E. would not discuss any

[806] Waitangi Tribunal, *Muriwhenua Land Report*, p.241.

[807] ibid., p.242.

[808] Charles Churton is named on the survey plan as having completed the Whakapaku survey in 1857. See SO 795. The suggestion that the gross under-calculation of the block's acreage was not discovered until 1879 (Waitangi Tribunal, *Muriwhenua Land Report*, p.242) is belied by an 1862 notice in the *Auckland Provincial Government Gazette* (7 June 1862, [docs, vol.24, p.8171]) announcing that the Whakapaku block of 12,000 acres had been claimed as a pastoral run, excluding an area of 900 acres previously claimed. The 1879 date would appear to be derived from a note on the original plan, recording this as having been entered on the 'Record Map' in that year.

[809] White to McLean, 2 March 1857, McLean Papers, folder 633, ATL, [docs, vol.10, pp.3311-3312].

> such questions with them but would attend to any representations they might make if embodied in a written statement. These people seem likely to cause some trouble or bother at Mangonui but White does not advise their receiving any attention. They consented to write instead of seeing the Govr. and have taken themselves off.[810]

Further correspondence concerning this claim has yet to be located.[811] However, in 1867 Pororua (who had not been a signatory to the 1856 deed) along with three others applied for and received title to the 200-acre Mangataraire block in the Native Land Court. Remarkably, at least part of Mangataraire overlapped into Whakapaku.[812] The Crown may have received four times more land than it had paid for, but Māori at least received a very small slice of this back (perhaps an act of contrition on the part of White, the presiding judge, who had so badly butchered the survey of Whakapaku). In 1901 Hemirua Paeara and others petitioned Parliament to prevent Pākehā cutting timber on part of the Whakapaku block and praying that the land be 'vested in the rightful owners'.[813] As the Muriwhenua Tribunal observed, the Whakapaku transaction had merely been 'a paper thing without any obvious reality'.[814] Even in the twentieth century local Māori continued to believe that the land was theirs.

It was to be a further two and a half years before the next successful purchase at Whangaroa. The Matawherohia block had, however, been the subject of negotiations for almost 18 months prior to a deed being signed in respect of the block. In February 1858 Kemp's list of expected purchase expenditure over the current and ensuring quarter had noted £350 as being required for Kawakawa, 'or, if not,

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[810] Smith to McLean, 5 July 1857, typescript, McLean Papers, vol.14, MS-1319, ATL, [docs, vol.9, p.2758].

[811] Smith forwarded Kemp a copy of a letter received from Te Ahuahu, 'preferring a claim upon land within the limits of the Whakapaku Block', in August 1857 and requested that he provide a report on this. However, neither Te Ahuahu's letter of complaint nor Kemp's report thereon were included in the published papers relative to Crown purchasing. Smith to Kemp, 10 August 1857, AJHR, 1861, C-1, p.21, [docs, vol.12, p.3869].

[812] Claudia Geiringer, 'Subsequent Maori Protest Arising from the Crown Land Purchases in Muriwhenua 1850-1865', April 1993, Wai-45, H-7, p.37.

[813] ibid., p.68.

[814] Waitangi Tribunal, *Muriwhenua Land Report*, p.244.

Matawherohia'.[815] McLean appears to have issued instructions on 22 January 1858 to negotiate the purchase of Matawherohia, based on an offer of the land by Heremaia Te Ara.[816] In October 1858 Kemp reported that the block, estimated at 8000 acres, was likely to be purchased for the sum of £250.[817] By January 1859 the survey of the block had been completed and the price fixed at the rate earlier indicated. However, the Chief Commissioner's office pointed to the 'great discrepancy' between the 8000-acre area reported by him the previous December and the area as ascertained by survey of 3200 acres, 'which has the effect of nearly trebling the price per acre' and requested that Kemp should report as to whether matters had proceeded so far as to commit the government to paying this sum.[818] Although Kemp's response is not among the correspondence the Land Purchase Department chose to publish, it was evidently deemed satisfactory, since in June 1859 the purchase of the block at the price of £250 was completed,[819] though neither block estimate turned out to be correct, since in October 1859 the corrected area for the block was listed as 3746 acres – in the end just another mundane Northland Crown purchase, where no one knew quite exactly what was being transacted, no plan was attached to the deed despite reference in the text to one, and (as usual) no reserves were set aside for Māori occupation and use.[820]

Further to the north of Matawherohia, the Kohumaru district, east of the Oruru block, had been excluded from the 1856 'settlement' of claims on the latter place, despite falling at least partly within the boundaries of Ford's old land claim there. By September 1858, though, it had become an important part of the Crown's objective in the far north to acquire a large contiguous area of lands across to the Victoria Valley. White informed Kemp in that month that:

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[815] Kemp to McLean, 16 February 1858, AJHR, 1861, C-1, p.24, [docs, vol.12, p.3871].

[816] McLean to Kemp, 12 October 1858, AJHR, 1861, C-1, p.30, [docs, vol12, p.3874].

[817] Kemp to McLean, 16 October 1858, AJHR, 1861, C-1, p.31, [docs, vol.12, p.3874].

[818] Smith to Kemp, 4 March 1859, AJHR, 1861, C-1, p.35, [docs, vol.12, p.3876].

[819] AUC 15, LINZ, [docs, vol.22, pp.72187219]; Turton's Deed No.40, Province of Auckland, pp.57-58, in Berghan Supporting Papers, vol.6, pp.3471-3472.

[820] Kemp to McLean, 26 October 1859, AJHR, 1861, C-1, p.39, [docs, vol.12, p.3878].

> The Natives having consented to meet our views relative to the boundaries of Kohumaru Block and the Wai Kainga or Maunga Taniwa [sic] Block, which adjoins the Kohumaru, both of which overlap the Oruru Block surveyed by me, being most desirable purchases, I beg herewith to report them as ready for survey, and would recommend that the work be commenced as soon as possible, as the payments for these Blocks will hasten the acquisition of the Victoria valley, about which there has been much discussion of late; and, as you are aware, these lands will be a valuable acquisition, not only on account of the good soil, but fine timber.[821]

Kemp, in forwarding this correspondence to McLean, again noted that the proposed transactions would assist with 'the object...to buy up the whole of the available land between the Oruru and Victoria plains, and by this means to connect the Blocks as soon as possible'.[822] In January 1859 Kemp informed the Chief Commissioner that the offer of £350 for Kohumaru (estimated to contain 10,000 acres, and described as being easily accessible by water and although very broken containing much desirable land including some very fine kauri) had been declined by the owners.[823] Privately, though, he informed McLean in May 1859 that there was every 'prospect of more purchases being made in that district [Mangonui] as soon as the Natives are short of money'.[824] Kemp's proposed payment for Kohumaru was approved by the governor in August 1859.[825] But on 12 September 1859 Kemp reported that he had completed the purchase of the Kohumaru block, which had been surveyed by Kempthorne at 11,062 acres, for the sum of £400.[826] Kemp was subsequently asked to explain why he had exceeded his authorisation to purchase the block at £350. His justification for

[821] White to Kemp, 7 September 1858, AJHR, 1861, C-1, p.29, [docs, vol.12, p.3873].

[822] Kemp to McLean, 22 September 1858, AJHR, 1861, C-1, p.29, [docs, vol.12, p.3873].

[823] Kemp to McLean, 18 January 1859, AJHR, 1861, C-1, pp.33-34, [docs, vol.12, pp.3875-3876].

[824] Kemp to McLean, 24 May 1859, McLean Papers, folder 368, ATL, [docs, vol.10, p.3150].

[825] Smith to Kemp, 10 August 1859, AJHR, 1861, C-1, p.37, [docs, vol.12, p.3877].

[826] Kemp to McLean, 12 September 1859, AJHR, 1861, C-1, p.38, [docs, vol.12, p.3878].

taking this step does not appear among the evidently selective published records of the Native Land Purchase Department, but was nevertheless deemed satisfactory.[827]

The deed itself, signed by Pororua and other owners on 29 August 1859 contained one glaring anomaly. It referred to an un-named reserve, of unspecified extent, in an unknown location, simply stating that the '[t]he map of the survey hereunto annexed will point out clearly the boundaries of this Block, and of the Reserve made for the Natives'.[828] The plan, though, contained no clear depiction of any reserve.[829]

Yet contrary perhaps to Kemp's suggestion, not all transactions at this time were motivated by the short-term need for hard cash. Some northern Māori sought to use the proceeds received from transacting lands with the Crown to fund their own economic development. Kingi Hori Kira, one of the owners of the 883-acre Taraire (No.2) block, a 'beautiful' and 'exceedingly valuable' piece of land, evidently used at least part of the £100 received for the land in February 1862 to purchase a vessel.[830] He had evidently been seeking to transact the land for these purposes since at least 1859.[831]

Little is known about the motives of the owners of the Maungataniwha lands, located to the south of the Oruru Valley, in agreeing to transact these with the Crown in the early 1860s. We can be reasonably certain of the Crown's primary motivation in purchasing these lands, however, as both Kemp and White had outlined in 1858 a strategy premised on acquiring Māori lands adjacent to the Oruru Valley (including Kohumaru and Maungataniwha) as part of their drive to acquire the Victoria Valley, which was widely considered to be among the best land in the north. The Takahue

[827] Smith to Kemp, December 1859, AJHR, 1861, C-1, p.40, [docs, vol.12, p.3879].

[828] AUC 16, LINZ, [docs, vol.22, pp.7220-7221]; Turton's Deed No.4, Province of Auckland, pp.4-5.

[829] According to the Tribunal's Muriwhenua Report, the reserve in question, called Parangiora, was 160 acres in extent, of which nearly three-quarters was later alienated. Waitangi Tribunal, *Muriwhenua Land Report*, p.237.

[830] Kemp to McLean, 28 March 1860, AJHR, 1861, C-1, p.41, [docs, vol.12, p.3879]; AUC 26, LINZ, [docs, vol.22, pp.7227-7228]; Turton's Deed No.46, Province of Auckland, pp.64-65, in Berghan Supporting Papers, vol.6, pp.3478-3479.

[831] Kemp to Barstow, 24 December 1859, BAVX 4817/6b, Arch-NZ (Akl), [docs, vol.23, pp.7832-7833].

owners may have proved reluctant to transact lands there, but in 1855 Nopera Panakareao and others had in fact offered to 'tuku' lands in the Maungataniwha area to the Crown.[832]

White described the area as 'a valuable tract of land' and urged the government to take steps to purchase the land, 'making however a point of concluding the purchase of Oruru before entering on another'.[833] Kemp proposed commencing negotiations in respect of the Maungataniwha lands in October 1858,[834] though it was the best part of another four years before the first deed was signed. The Maungataniwha East deed, signed in August 1862, covered an area of some 8469 acres, for which the sum of just over £388 was paid.[835] Although four blocks totalling 1405 acres adjacent to Peria were excluded from the transaction these were not referred to in the deed, which was signed at Mangonui the day after the first meeting of the Mangonui District Rūnanga had been called to a close.[836]

In fact the two further deeds with respect to this area, Maungataniwha West No.1, covering an area of some 12,940 acres, and Maungataniwha West No.2 (11,002 acres), both of which were signed on 14 January 1863, followed hard on the heels of the second meeting of the Mangonui District Rūnanga. It would appear that the division of the purchase money may have been the subject of debate at the Rūnanga.[837] The claimants to Maungataniwha West No.1 received some £647, and although no reserves were set aside out of the transaction, the adjacent settlement of Peria was excluded from the sale.[838] Maungataniwha West No.2, for which the

[832] Nopera and others to White, 10 May 1855, IA 1/1855/1860, Arch-NZ, [docs, vol.2, pp.663-667].

[833] White to Colonial Secretary, 30 May 1855, IA 1/1855/1860, Arch-NZ, [docs, vol.2, pp.661-662].

[834] Kemp to McLean, 16 October 1858, AJHR, 1861, C-1, p.31, [docs, vol.12, p.3874].

[835] AUC 31, LINZ, [docs, vol.22, pp.7235-7236]; Turton's Deed No.12, Province of Auckland, pp.14-15.

[836] Waitangi Tribunal, *Muriwhenua Land Report*, p.237; *New Zealander*, 20 August 1862, [docs, vol.21, p.7078].

[837] White to Native Secretary, 27 February 1863, BAFO A760/11, pp.235-236, Arch-NZ (Akl), in O'Malley and Robertson Supporting Papers, vol.6, pp.1467-1468.

[838] AUC 33, LINZ, [docs, vol.22, p.7237]; Turton's Deed No.14, Province of Auckland, pp.16-17; Waitangi Tribunal, *Muriwhenua Land Report*, p.236.

owners received just over £560, included two reserves, Takeke of 79 acres and Mangataiore of 381 acres.[839] In all, the Crown had secured some 32,591 acres by virtue of the three Maungataniwha transactions, at an average price of just under one shilling per acre.

It soon became apparent, however, that there were other claimants to the lands whose interests had not been adequately acknowledged. In fact, as early as June 1862 Kemp and White had received a letter from Te Hira Ngarapo 'relative to a claim to some land which he understands is about to be sold' and requesting 'that the purchase will not be completed without his presence'.[840] Subsequent correspondence suggests that his grievance was probably related to Maungataniwha, since in September 1862 James Clendon informed the Waimate Civil Commissioner, George Clarke, that:

> Te Hira Ngarapo and other cheifs [sic] have called upon me to express their disapproval at the late sale of land in the North of which they are large claimants, during the last five years they have repeatedly objected to this sale unless they were consulted on the subject; and now that only £5 have been sent them, they have returned it, and request me to address you on this subject, their desire is that a grand runanga should be called at the Waimate to investigate their claims, they intend to see you soon on the matter, and in the meantime they will take possession of some part of Maungatanewha [sic], which has been surveyed prepatory to a sale until their claim is decided.[841]

Clarke instructed Clendon nearly a fortnight later to:

> inform te Hira Ngarepo [sic] and the other Rarawa Chiefs having claims upon Land sold to the Government that upon due investigation, I have no doubt they will be amicably adjusted. In the mean time [sic] tell them there is no

[839] AUC 34, LINZ, [docs, vol.22, pp.7238-7239]; Turton's Deed No.15, Province of Auckland, pp.18-19; Waitangi Tribunal, *Muriwhenua Land Report*, p.236.

[840] John Webster (clerk) to Kemp and White, 14 June 1862, Hokianga [Resident Magistrate's] Letterbook, qMS-0473, ATL. [Unable to be copied].

[841] Clendon to Clarke, 12 September 1862, BBIW 4808/1c, Arch-NZ (Akl), [docs, vol.24, pp.8271-8272].

> necessity of taking possession of these lands, neither would it be consistent in any Native Officer to act in opposition to the Government by any demonstration of hostility, I will let you [know] of the steps the Government may propose to adopt in this case, and tell them to have the goodness to request the Natives to remain quiet at their home's [sic].[842]

It would appear that, rather than undertake the 'due investigation' Clarke had referred to, the government's initial response was simply to ignore the complaint, since in May 1863 Clendon again wrote to Clarke, forwarding a letter from Te Hira 'relative to his claim to Maungataniwha and urging me to request that an enquiry may be made into his claim with as little delay as convenient'.[843] The Civil Commissioner does not appear to have responded to this.

In January 1864 Edward Shortland, the Native Secretary, broached the subject directly with Kemp on behalf of the Colonial Secretary (William Fox), writing that:

> In reference to a claim advanced by the Hokianga Section of the Rarawa to land in [the] neighbourhood of Maungataniwha, purchased by you from other Rarawa Natives, Mr. Fox observes that on a former occasion you recognised a similar claim, made by the same Natives to adjacent lands, by paying Five Pounds, and promising that their claim should be considered in any subsequent purchases.
>
> Mr. Fox wishes to be informed why this pledge, as it would appear, has not been fulfilled & why nothing has been done by you towards settling the dispute.[844]

[842] Clarke to Clendon, 24 September 1862, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, p.16, [docs, vol.11, p.3579].

[843] Clendon to Clarke, 27 May 1863, Hokianga [Resident Magistrate's] Letterbook, qMS-0473, ATL. [Unable to be copied].

[844] E. Shortland to Kemp, 14 January 1864, MA 4/6, Arch-NZ, [docs, vol.5, p.1564].

Kemp's response to this request for an explanation of his actions has not been located. However, Māori subsequently filed claims with respect to all three Maungataniwha blocks in the Native Land Court.[845] And in 1870 McLean recorded, during a visit to the north that:

> Te Patu, Tipene, and others, sold Maungatamuwha [sic] to Mr. White; but did not give Witana or his people any share of the price paid for it by Kemp or White; although no doubt they have a claim. Witana says that this is his only grievance against the Government. The price paid for the land was more than £1000; and it seems some carelessness was displayed in making the purchase. This should be settled by some payment.[846]

Whether such a payment was subsequently made to those originally overlooked is not clear from the available sources.

The penultimate Crown purchase in the Whangaroa district in the pre-1865 period also happened to be by far the largest.[847] Kemp reported in April 1861 that he had taken advantage of his recent attendance at a circuit court convened by White at Mangonui:

> to hold a final meeting of the principal Chiefs concerned in the sale of a considerable Block of land at the head of the Whangaroa Harbour, estimated to contain from thirty to thirty-five thousand acres (30 to 35,000 acres). For the Block I have been some time in treaty. Apart from its other advantages, its acquisition would be very desirable as connecting the whole of the public

[845] John White, memorandum, 21 June 1866, John White Papers, MS-Papers-0075-106c, ATL, [docs, vol.24, pp.8438-8449].

[846] McLean, Journal, 2 January 1870, vol.4, MS-1287, ATL, [docs, vol.24, p.8408].

[847] The final Crown purchase at Whangaroa in this period was the 2900-acre Te Takou block, purchased from the 'Chiefs and People of the Tribe Ngatirehia' for the sum of £217 10s. in September 1865. Other than the deed itself, no further documentary evidence has been located in relation to this transaction. See AUC 6, LINZ, [docs, vol.22, pp.7190-7192]; Turton's Deed No.55, Province of Auckland, pp.73-74.

> lands between the Bay of Islands and Mangonui, and is the only intervening Block over which the Native title has not been extinguished.[848]

The recent death of the main chief in the area, Ururoa, had interrupted proceedings, Kemp added, as a consequence of which completion of the purchase would be delayed for some time. In the interim, he had proposed to the chiefs that they should cut the boundary lines as a safe way of ascertaining all claims on the block, and Kemp had promised that the government would furnish a surveyor for these purposes if the chiefs agreed with the suggestion.

Although Kemp failed to name the block he was in negotiation for, a subsequent report prepared in June 1861 listed the 35,000 Pupuke block as being under negotiation in the Whangaroa district.[849] In February 1863 Kemp reported, in response to a letter received from Hone Heke Ururoa relative to the sale of a block of land near Pupuke, that:

> as this is the only extensive block between the Government lands already purchased within the district of the Bay of Islands and Mangonui, over which the native title has not been extinguished, it has been arranged, after a prolonged negotiation, to offer the sum of one shilling and three-pence per acre, which was finally agreed to by the principal chiefs, Hare Hongi, Paora Ururoa, and others. The survey of the block will be entered upon without delay, and shall be reported as soon as finished.[850]

Two months later, Kemp reported that the survey was underway and that the claimants to the block had 'amicably arranged their boundary lines'. Kemp also noted that Hokianga Māori had proposed carrying on the survey so as to include the lands between the Maungataniwha ranges and Mangamuka provided they could agree among themselves as to this.[851]

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[848] Kemp to McLean, 14 April 1861, AJHR, 1861, C-1, p.43, [docs, vol.12, p.3880].

[849] Kemp to McLean, 7 June 1861, AJHR, 1861, C-1, p.44, [docs, vol.12, p.3881].

[850] Kemp to McLean, 3 February 1863, *Epitome*, C, p.14.

[851] Kemp to McLean, 2 April 1863, *Epitome*, C, p.15.

By July 1863 the survey had been completed, and the area of the block estimated at 19,003 acres. Kemp reported that, at the insistence of the claimants, a subdivisional line had been laid down on the map as the basis upon which the initial distribution of the payment could be made, 'a further and more detailed distribution being afterwards made, according to their own customs, and with reference to the peculiar nature of each individual claim'.[852] The plan of the block had been submitted to Waka Nene for inspection, 'as the back or interior lines of the block join the claims of the Hokianga natives'. Added to this, prior to the survey, Nene's people had been in occupation of lands within the block, engaging in felling kauri spars. Kemp informed the chief that he would be permitted to retain possession of the timber which he had already been contracted to supply, 'as well as to avoid any difficulty as to the precise boundary between the two tribes – a point upon which there has been some little dispute, but which Tamati Waka has taken great pains to assist me in adjusting'. Although he had agreement to purchase the lands at the rate of one shilling and three pence per acre, Kemp also reported that he had been required to agree to pay double that amount to secure a 589-acre outlet to the Whangaroa Harbour, for part of which the local chief, Ruinga, had been promised 20 shillings per acre privately as soon as direct purchasing was permitted.[853]

On 8 October 1863 a deed was signed by Hone Heke Ururoa and others described as members of the Te Tahawai tribe, who received just over £1273 for the block.[854] In accordance with the earlier subdivisional arrangements, the accompanying plan indicated that 14,398 acres was being 'sold by Heke', with a further 4605 acres 'sold by Taniora'. An area of 589 acres was clearly marked off on the plan (though without any explanation or label) but appears to have been the area for which the higher price of two shillings and sixpence was to be paid. The block's total acreage was therefore 19,592 acres, rather than the 19,003 acres referred to by Kemp. The deed also referred

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[852] Kemp to McLean, 8 July 1863, *Epitome*, C, p.15.

[853] Kemp to McLean, 8 July 1863, *Epitome*, C, p.15.

[854] AUC 27, LINZ, [docs, vol.22, pp.7229-7230]; Turton's Deed No.17, Province of Auckland, pp.20-21, in Berghan Supporting Papers, vol.6, pp.3450-3451.

to a 'portion excluded from the purchase by the Natives along the Pupuke', although there is no reference to any reserve on the plan. A reserve of 293 acres, known as Mangahoutoa, was awarded to Pororua Wharekauri and two others by the Native Land Court in 1866.[855] He had not been a signatory to the deed.

Kemp's report accompanying the deed failed to shed much light on proceedings. Kemp noted in early November 1863 that an 'instalment' of £80 had been paid to Waka Nene and his brother on 30 October 1863, suggesting the full sum had not in fact been paid at the time of the signing as the deed indicated. He further reported with reference to the removal of kauri timber, that Waka Nene had indicated that 'having received a fair share of the payment, any further claim to the timber in question, ceases on his own part and that of his people'. Soon after the payment was made, Kemp added, 'an offer of the remainder of this block was brought under discussion; of about the same extent, with more available land and valuable kauri timber, commanding the entire head of the Whangaroa harbour'.[856] He thought there little doubt as to the acquisition of these remaining lands in a reasonable time.

The Crown's interest in Pupuke had been both strategic and resource-based. On the former front, the acquisition of Pupuke connected up Crown and European lands in the Bay of Islands district with those in Whangaroa and Mangonui to form a large contiguous area over which native title had been extinguished and from which purchasing could be extended northwards into the much coveted Victoria Valley, westwards to Hokianga and further around the Whangaroa district. From a resource perspective, it is apparent that the block contained extensive reserves of kauri and other timber, which were being worked by local Māori at the time of the Crown's purchase. Kemp had been required to pay a premium in order to secure an outlet to the Whangaroa Harbour but evidently did not consider that the value of the timber on the block should be appraised and factored into the price paid.

In 1925 one local timber contractor, James Maxwell, informed the Native Land Court that he had worked the kauri on the Pupuke block; it was 'very handy timber',

[855] Waitangi Tribunal, *Muriwhenua Land Report*, p.331.

[856] Kemp to McLean, 5 November 1863, *Epitome*, C, pp.15-16.

'convenient to a splendid creek, handy to a harbour' and sold to Europeans for fourpence per 100 feet in the mid-1880s (that is, at the height of the Long Depression). Maxwell had evidently onsold the kauri for a shilling per 100 feet, though its value had increased to six shillings per 100 feet by the 1920s.[857] At either rate (and assuming, say, a modest 10,000 feet per acre over just a fraction of the block), it is evident that the Crown's purchase money paid for Pupuke and other Northland land blocks containing extensive timber reserves was easily recouped many times over. The protection of Māori interests came a distant second place in Crown purchasing in Northland to the overriding desire to secure a bargain basement deal for the government.

The lack of due care and diligence which had characterised Crown dealings in the Whangaroa district, from the travesty of a 'purchase' that was signed with Panakareao in 1840 onwards, including the failure to identify all customary owners before commencing transactions, inadequate descriptions of block boundaries, incomplete or incompetent surveying practices, inadequate identification of reserves, and so on, does, though, appear to have rendered many of these transactions nugatory for several decades thereafter. In 1870 Judge Maning informed McLean privately that he suspected 'from what I have heard and seen since I have been at work here that much of the claims made by natives to Govt. lands about Mangonui and Whangaroa have arisen in consequence of very loose proceedings in the purchase of land there'.[858]

### 5.5 Whangarei

Crown purchasing operations commenced in the Whangarei district late in 1853, when John Grant Johnson was sent to the area 'to negotiate [the] purchase of as extensive a block of land as possible'.[859] Over the next 12 years the Crown would purchase more land at Whangarei than in any other district in Northland. But whereas elsewhere the objective was generally to keep purchasing ahead of the immediate

[857] Extract from Hokianga Minute Book 5, 1 May 1925, MA 92/2, Arch-NZ, [docs, vol.7, pp.pp.2418-2419].

[858] Maning to McLean, 17 May 1870, McLean Papers, folder 445, ATL, [docs, vol.10, p.3217].

[859] Andrew Sinclair to Johnson, 7 November 1853, *Epitome*, C, p.55.

needs of settlement, at Whangarei, uniquely, a body of Gaelic-speaking settlers under the leadership of the Reverend Norman McLeod (known simply as 'the Highlanders') were directly involved in purchasing operations from the outset. In fact, Johnson's initial instructions included the rider that any purchase was to include 'a location fit for the Highlanders', who would subsequently exercise significant influence over the Crown's purchasing priorities in the district.

In Johnson's initial report from Whangarei, forwarded to the Colonial Secretary in December 1853, he declared that 'the nature of the native claims' in the district were 'clearly defined', with Te Parawhau, the 'original tribe of Whangarei, occupying and claiming the southern bank, and the Ngapuhi the northern bank of the Whangarei, but both parties being connected with, and, in a great measure, controlled by Tirarau, the chief of the Wairoa River in Kaipara'.[860] He immediately set off to gain the chief's consent to the object of his mission, which Johnson reported he had 'obtained in general terms over any tract of country for which I could make arrangements with the immediate owners', with the exception of an area between Whangarei and Northern Wairoa which Te Tirarau had determined should remain in Māori ownership and the extensive area at Whangarei subject to the old land claim of James Busby, which, according to Johnson, the chief had declared to be 'at the disposal of the Government'.

Johnson would soon discover that customary rights at Whangarei were rather more complex than his 'two tribes, one river' initial assessment had portrayed them, though his reliance on Te Tirarau to win support for his purchasing efforts was to be a constant feature of his dealings at Whangarei. Indeed, as Johnson recalled in 1856, he had, from the time of first arrival at Whangarei 'committed myself to the policy of supporting this Chief in his authority over the tribes, and the results are that he has been a principal party to the disposal of about a hundred and fifty thousand acres to the Crown'.[861] Whether Te Tirarau needed Johnson's support as much as the Crown needed the chief's assistance in order to overcome opposition to purchasing at Whangarei seems, however, doubtful. Indeed, as Paul Thomas has noted, Johnson's

[860] Johnson to Colonial Secretary, 12 December 1853, *Epitome*, C, p.55.

[861] Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, p.70, [docs, vol.12, p.3894].

subsequent dependence on the chief was both a mark of just how little influence or authority the Crown was able to exert in the region and, in some instances, a measure of the willingness of officials to sacrifice appropriate standards in favour of short-term gains.[862] Expediency would long remain a dominant feature of purchasing operations in the Whangarei district.

Not losing any time in his efforts to prise open the district, Johnson had quickly identified an area estimated at up to 200,000 acres at Mangawhai as a target for acquisition, but left representatives of the Nova Scotian party to inspect the block whilst negotiating for a second block of 14,000 acres, the owners of which had been adherents of Hone Heke during the Northern War. Johnson noted that their antipathy to cattle trespass committed by settler stock, 'their scruples about sacred places', and 'extravagant ideas' as to price occasioned from witnessing land transfers between the settlers at Whangarei left him with 'only faint hopes of success' in securing the block. He had finally reached the point where the owners had agreed to accept the sum of £700 for their lands when messengers had arrived bearing letters from Hariata, the widow of Hone Heke, urging them not to sell any lands to the Crown.[863]

Meanwhile, Johnson learned upon his return to Auckland that the Nova Scotian party had rejected Mangawhai as a suitable site for their settlement and instead favoured the Ruakaka Valley, within the huge area subject to Busby's claim.[864] Members of the group had themselves lobbied the government directly for preferential rights to up to 50,000 acres that might be acquired in the vicinity of Whangarei.[865] The Surveyor General reported on 14 December 1853 that Whangarei Māori were, according to Johnson, willing to sell around 240,000 acres of land in the area for just £600 and recommended that Johnson and the money both be despatched there without delay in order to finalise the deal.

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[862] Paul Thomas, 'The Crown and Maori in the Northern Wairoa, 1840-1865', (Report commissioned by CFRT), April 1999, p.141.

[863] Johnson to Colonial Secretary, 12 December 1853, *Epitome*, C, p.55.

[864] Johnson to Colonial Secretary, 12 December 1853, *Epitome*, C, p.56.

[865] Duncan McKenzie to the Governor, 15 December 1853, 'Correspondence Relative to Proposed Immigration into this Colony from Canada and Nova Scotia', AJHR, 1856, C-8, pp.5-6, [docs, vol.12, 3721-3722].

The prospect of such an extensive purchase at a bargain basement price was enough to see Johnson quickly sent north again. In December 1853 the Commissioner of Crown Lands somewhat prematurely gazetted an application from a representative of the Nova Scotians for a run on the south side of Whangarei Harbour.[866] Yet Johnson soon discovered that matters were less straightforward than he had previously assumed, reporting from Pakiri on 31 December 1853 that 'the extinction of the native claims are fraught with more difficulty, and the price required will be much greater, than I had anticipated at the date of my last report'.[867] Johnson now reported that £1000 would be required to purchase just 60,000 acres. He had, Johnson added, 'used every exertion to reduce the price', but with a large number of hapū and iwi claiming rights to the Mangawhai lands had been unable to do so. In fact, when the deed was signed for the Mangawhai block on 3 March 1854 Johnson had been forced to pay £1060, in a deed which also included provision for 10% of the proceeds of the sale of the block to settlers to be expended for the benefit of the vendors.[868] Modern estimates suggest the block acreage of Mangawhai was barely half what Johnson had believed it to be.[869]

On 6 January 1854 Johnson reported that he had completed negotiations in respect of a further 60,000 acres located to the north of the Mangawhai block, including the Ruakaka and Waipu valleys which had been 'applied for by the recently-arrived Highland immigrants'. The whole of the block was 'well wooded and watered', he added, and led to 'further available tracts on the west coast of this island'.[870] Johnson reported with respect to this additional area of land:

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[866] N.R. McKenzie, *The Gael Fares Forth: The Romantic Story of Waipu and Her Sister Settlements*, 2nd ed., Wellington: Whitcombe & Tombs, 1942, p.56.

[867] Johnson to Colonial Secretary, 31 December 1853, *Epitome*, C, p.56.

[868] Turton's Deed No.98, Province of Auckland, pp.133-136, in Berghan Supporting Papers, vol.6, pp.3549-3552. The Mangawhai block was inquired into, and reported on, as part of the Kaipara Stage III hearing district. It is briefly traversed again here as an important part of the broader context of the Ruakaka and Waipu transactions.

[869] Waitangi Tribunal, *The Kaipara Report*, p.123.

[870] Johnson to Colonial Secretary, 6 January 1854, *Epitome*, C, p.57.

> The difficulty I had to contend with in this block was the confining the natives into a reasonable reserve in the valley of the Ruakaka, as they insisted on keeping the most valuable tract back for themselves, to which I could not consent, for Mr. McLeod, one of the leading men of the Highlanders, having arrived, and our inspecting the valley and district together, he quite agreed with me that, unless the natives could be confined to a limited reserve, the valley could not be made available as their settlement.[871]

Not only were the Nova Scotian settlers dictating the Crown's purchasing priorities, they were also evidently now to have a major say as to the reserves Māori might be permitted to retain. Johnson reported that after 'much discussion' the owners had eventually agreed to accept his idea as to the quantity they required for their use and an area with a one mile frontage on to the Ruakaka River extending back into the hills was allowed to them.

James Busby had meanwhile written to the vendors to request that they not allow Johnson to intrude upon his land (and had taken out an advertisement in one of the Auckland newspapers warning others not to interfere with his property),[872] but Johnson reported that his requests had little effect, and the owners were perfectly satisfied with his reassurances that the government was prepared to satisfy their claims provided they agreed to give up the lands. Some years later, in fact, when Johnson was asked by the Land Claims Commissioner, F.D. Bell, what effect if any Busby's claims had had in respect of his own efforts to purchase the same lands, he reported that:

> In a political point of view Mr Busby's purchases were of considerable advantage to the public, in as much as they were instrumental in extinguishing the Ngapuhi Land league – which then prohibited the sale of Land in this district... .

[871] Johnson to Colonial Secretary, 6 January 1854, *Epitome*, C, p.57.

[872] McKenzie, *The Gael Fares Forth*, p.56.

> The fact of these lands having been formerly in a measure sold to Mr Busby gave the Natives who were favourable to extended civilization and an influx of European Colonists to the district, a pretext for withholding those lands from the power of the league, and these purchases, which were the first in the Whangarei district having been effected for the Government to the satisfaction of the Natives, the land selling party became too powerful, for the league, and the consequence was that it eventually got into disrepute with the majority of the Natives and gradually became defunct.[873]

It was not just that the prior transactions with Busby provided those favourable to dealing with the government with a ready-made excuse for ignoring the injunctions of the supposed 'land league'. Johnson noted that 'the original purchase by Mr Busby was a fact that could not be evaded'.[874] He had evidently pushed this line in negotiating the initial transactions at Whangarei in order to overcome resistance to his dealings and, ultimately, as he confessed some seven years later, to acquire the lands in question for the Crown at a lesser price than would otherwise have been required. When he had negotiated for the Waipu block, Johnson informed Bell:

> I told the Natives that as some of them had sold the Waipu to Mr Busby that they ought to allow me to settle all the outstanding claims and give it up to the Crown for the Nova Scotian Settlement, and leave the Government to arrange matters with Mr Busby at a future time. This arrangement was eventually agreed to, and comparing the amount paid by the Crown with that given for the adjoining Block just previously, I cannot but think that the Crown have saved some three or four hundred pounds by the transaction.[875]

Johnson claimed that no money had been saved on the acquisition of other blocks in the area, but again asserted that the fact of Busby's claim overlapping into a number

[873] Johnson to McLean, 16 September 1861, OLC 14-24B, Arch-NZ, in Paula Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.1, pp.262-263.

[874] Johnson to McLean, 21 October 1861, OLC 14-24B, Arch-NZ, in Paula Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.1, p.265.

[875] Johnson to Bell, 13 November 1861, OLC 14-24B, Arch-NZ, in Paula Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.1, pp.268-269.

of these had helped to undermine the influence of the 'land league' in blocking land sales in the Whangarei district.

Clearly, Busby's prior transactions had been used by Johnson as a means of gaining a foothold into the Whangarei district, as his frank assessments from 1861 revealed.[876] Yet Johnson's contemporary reports, though noting both the opposition from Busby on the basis of his prior claims and from the 'land league', said nothing of how he had played off the one against the other in order to complete the first Crown purchases in the district. On 20 March 1854 Johnson forwarded the Colonial Secretary the deeds for the first three completed Crown purchases in the Whangarei district, Mangawhai, Waipu and Ruakaka. He noted in doing so that the 'attempts of Mr. Busby to frustrate my operations, together with the efforts of a socity [sic] which exists among the Natives, at the head of whom is the widow of John Heke, for the purpose of preventing the sale of land to the Europeans, caused me much trouble and anxiety'.[877] He also forwarded the government a letter from 'the said society at Kaikohe addressed to the Chiefs of Whangarei', which was, he added:

> by the Native mind...considered a very talented exhortion, and which met with great applause when read at the several meetings of the claimants; and had I adopted the usual and safer method of assembling all the claimants before making my payment, the influence of the before-mentioned agencies would have been apt to have terminated in preventing the sale of the land...[878]

The accompanying letter, addressed from the 'Office of Korongohi and Kuao', had reminded the Whangarei chiefs that '[i]f the land is not given away, even the lowest among us can till his ground, and obtain tobacco and clothes, and all the other articles

[876] Johnson's statements on this question were subsequently cited by the Land Claims Commissioner in support of his recommendation that Busby be awarded compensation for his Whangarei interests. See F.D. Bell, Report of the Land Claims Commissioner, 8 July 1862, AJHR, 1862, D-10, p.11.

[877] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

[878] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

of the Europeans; but there is nothing that can be obtained from them without payment, nothing at all'.[879]

Apart from a few isolated references to a northern 'land league', there appears to be little further documentary evidence on this subject. Settlers and Crown officials alike were wont to find land leagues wherever Māori showed a disinclination to enter into land transactions, although the letter to the Whangarei chiefs provides perhaps the strongest confirmation that such a movement was in existence in the north at this time. Further proof would appear to come in the form of a letter written by Gilbert Mair, one of the Whangarei district's longest-standing settlers, that same month. Mair informed the government that:

> Some time since a native of the name of Sydney returned from the Bay, and at once commenced exciting the natives to all manner of mischief, and brought them to my place to demand the land back, for which they have received payment and a small vessel; they have had and used her for several years, and now have threatened to return her, and declared that no one shall settle on the land, that they will burn down their houses; they have received a letter from Harriet Heke's wife [sic], desiring them not to allow any more settlers to come here, and not to sell any land; indeed, it was in consequence of that letter, together with the influence of Sydney, that the land was not sold to Government as agreed by Pohe.[880]

Mair requested that the government 'send some authority here to prevent further trouble'. James Clendon, the Russell Resident Magistrate to whom Mair's letter was referred, was relaxed about the whole affair, however, declaring that '[t]he expression we will take back our land or want payment for our land, from young men, is of frequent occurrence, so much so that I did not believe any old settler would have paid any attention to it'.[881] Clendon would have further first-hand experience of this just a

[879] Office of Korongohi and Kuao to the Chiefs of Whangarei, 18 February 1854, AJHR, 1861, C-1, p.49, [docs, vol.12, p.3883].
[880] Robert Mair (for Gilbert Mair) to Major Nugent (Native Secretary), 10 February 1854, IA 1/1854/708, Arch-NZ, [docs, vol.2, pp.471-473].

[881] Clendon, minute, [date obscured, c.February 1854], IA 1/1854/708, Arch-NZ, [docs, vol.2, p.474].

few months later, when a 'second payment' was demanded for Kororareka,[882] but appears to have later taken the 'land league' more seriously, urging in 1855 that the government take advantage of an eel-fishing dispute at Lake Omapere to 'break the league'.[883]

Johnson had, by his own admission, overcome the opposition to land dealings at Whangarei encountered early in 1854 by eschewing gatherings of all claimants to the lands – 'the usual and safer method' – in favour of dealing solely with those who had first come forward to offer the lands:

> and actuated by this principle, I accepted the offers of the Chiefs who first came forward to sell the Ruakaka, and paid to them the sum of One hundred pounds (£100) for their claims, reserving the sum of Two hundred and fifty pounds (£250) to satisfy the other parties with whom I had not yet come to terms. This decisive step showed the opposition that when the real owners of land are disposed to sell to the Government, it is not to be intimidated by the clamour of disaffected factions, exercising very little, if any ownership at all over the lands sought to be purchased...[884]

Johnson's rather tiresome and predictable assertion that the 'real owners' favoured selling rather begged the question as to why, if such was the case, he had reserved more than two-thirds of the purchase price for those who had 'yet to come to terms'. In effect, he had resorted to the standard device of purchasing the lands from only some of the owners, forcing other claimants to decide not whether they wished to sell their interests to the Crown, but simply whether they wished to receive compensation. This was essentially a form of compensated confiscation of land interests, which denied those who did not wish to part with their lands the opportunity to exercise this right.

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[882] *Southern Cross*, 21 July 1854, [docs, vol.19, pp.6295-6297]; Clendon to Colonial Secretary, 4 August 1854, IA 1/1854/2749, Arch-NZ, [docs, vol.2, pp.542-544].

[883] Clendon to Colonial Secretary, 5 April 1855, James Clendon Letterbook, 1852-1855, NZNS 477, ACL. [Unable to be copied]. See section 5.6.

[884] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

In fact, Johnson noted that he had 'adopted a similar course' with respect to the Waipu block, making payments to different groups with claims on the block individually, before convening a general meeting of all interested parties. The latter was a move which does not appear to have been adopted at any stage with respect to Ruakaka. Although claiming that the ensuing hui had confirmed his private dealings with the individual groups, both Te Tirarau and Hori Kingi Tahua refused the share allocated them, demanding an additional £50 'on account of relatives massacred on the ground'. Johnson did not consider their claims for an additional £50 to have any merit, but nevertheless added:

> they are powerful Chiefs and measure the value of their claim by their power to enforce its payment, and looking to the future peace and prosperity of this part of the country, as well as the influence which these Chiefs are able to exert over the future further acquisition of land, I do not believe that the expenditure of these sums of money will ultimately prove a loss to the Crown, and I have the most solemn assurances from the Chiefs at the meeting at Otaki [sic – 'Otaika'], that, if the demands are complied with, the undisputed possession of the land will be obtained for ever.[885]

Johnson may have considered the claims without foundation, though it seems significant that he failed to report any opposition to them from others in attendance at the hui. He had, in any event, adopted a similar approach with respect to Mangawhai, where Tirarau had demanded an additional sum of £100 on account of a waka overturning on the bar of the Mangawhai River in which a relative of his was drowned. Johnson recommended the claim for the favourable consideration of the government, 'more on the ground of its involving the peace of the country, than because of its equity'. Tirarau had taken the lead of the party favourably disposed towards transacting their lands with the Crown, he reported, and his initial offers of land in the district would 'be the means...of its eventually being all purchased'. Moreover, 'his good offices being obtained in our favour, will materially assist the more firm establishment of the authority of the Government in these newly acquired

[885] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

districts, where the Natives are not in such an advanced state of civilization, or so attached to the Government, as in many other parts of the Colony'.[886]

Te Tirarau's claim to £100 on account of Mangawhai, and the additional sums recommended on account of Waipu, were accordingly upheld and an additional deed encompassing both blocks was signed on 17 July 1854.[887] In fact, the original deeds for both Waipu and Ruakaka revealed the pattern of staggered payments made privately to individual groups which Johnson had resorted to in order to break opposition to his proceedings at Whangarei. The deed for Ruakaka, for instance, was dated 16 February 1854 and included signed acknowledgement from 'Pou, Te Mania and the rest of our tribe' to having received £250 on that date, but was accompanied by further such acknowledgements, both for £50, dated 8 March 1854 and 17 March 1854.[888] It was a similar story with the Waipu deed, dated 20 February 1854, on which date £200 was paid to some of the owners, but with further groups paid £50 each on 2 March 1854 and 8 March 1854.[889] A further payment of £10 in respect of Waipu was made to Eruera Toenga on 26 May 1854 by way of an additional deed.[890] Only in the case of the Mangawhai block did the date of the deed correspond with the date payment had been received by the various claimants to the block, though in that instance additional payments were also made by way of a supplementary deed as noted previously.[891]

Both the Ruakaka and Mangawhai deeds were accompanied by crudely drawn sketch plans of the blocks (indicating, in the case of the former, the general location of the

[886] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

[887] AUC 310, LINZ, [docs, vol.22, pp.7428-7434]; Turton's Deed No.102, Province of Auckland, pp.138-139, in Berghan Supporting Papers, vol.6, pp.3554-3555; Johnson to McLean, 2 August 1854, AJHR, 1861, C-1, p.58, [docs, vol.12, p.3888].

[888] AUC 309, LINZ, [docs, vol.22, 7423-7427]; Turton's Deed No.96, Province of Auckland, pp.127-128, in Berghan Supporting Papers, vol.6, pp.3543-3544.

[889] AUC 318, LINZ, [docs, vol.22, pp.7477-7481]; Turton's Deed No.97, Province of Auckland, pp.132-133, in Berghan Supporting Papers, vol.6, pp.3548-3549.

[890] AUC 308, LINZ, [docs, vol.22, pp.7413-7422]; Turton's Deed No.99, Province of Auckland, p.136, in Berghan Supporting Papers, vol.6, p.3552.

[891] AUC 311, LINZ, [docs, vol.22, pp.7435-7442]; Turton's Deed No.98, Province of Auckland, pp.133-136, in Berghan Supporting Papers, vol.6, pp.3549-3552.

reserve Johnson had managed to greatly reduce in size but with no reserves allocated in the Mangawhai block). The Waipu deed contained no plan at all, and none of the three deeds contained any indication as to the area of the blocks. John Rogan, who succeeded Johnson as Land Purchase Commissioner for the Whangarei district in the late 1850s, was scathing as to the quality of the plans prepared by Johnson (or 'Jack the Giant Killer' as he referred to him in correspondence with McLean!), referring privately in 1858 to 'the specimen of sketch plans of Johnson's that are now in this office, you know what I mean, the daubs which look as if a quantity of bullock's blood has dropped accidentally on a sheet of cartridge paper and bespattered it all over'.[892] In 1855 a surveyor employed by the Auckland Waste Lands Board observed (in the slightly more diplomatic language of official communications) with respect to Ruakaka and Mangawhai that:

> These Blocks have, I understand[,] never been surveyed, nor their boundaries cut or otherwise defined – they are represented in this office by a rough Sketch, valueless to either the seller or buyer of any part of them. Several farms have been sold here by the Board, & surveyed by the Purchasers but without a General Map of the whole, I am unable to fix the position of these properties, or to form any opinion as to the probable accuracy or otherwise, of surveys, at the charge of their respective properties.[893]

Non-existent or grossly inadequate plans available to Māori at the time of the transactions had come to be par for the course with respect to Northland Crown purchasing by this time. But there is another inconsistency between the three deeds which is more baffling. The Ruakaka deed had declared that 'Ten per cent. of the proceeds of the sale of this Land to be expended for the benefit of the Aborigines', whilst the Mangawhai deed stated that it was 'further agreed that ten per cent. of the proceeds of the sale of this block of Land by the Queen is to be expended for the benefit of the Natives'. These provisions were consistent with Johnson's initial instructions, dated 7 November 1853, which had noted that 'a clause will be inserted

[892] Rogan to McLean, 12 January 1858, McLean Papers, typescript, vol.15, MS-1320, ATL, [docs, vol.9, p.2775].

[893] C.P. O'Rafferty, memorandum, n.d. [c.September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, p.716].

in the deed of purchase reserving for native purposes ten per cent of the future proceeds which may be realised from the sale of the land'.[894] This was consistent with instructions issued by Governor Grey shortly before his departure from New Zealand at the end of 1853 which had seen similar provisions included in seven other deeds of purchase negotiated in the Auckland province between 5 November 1853 and 30 March 1854.[895]

Notable for its omission from this list was the Waipu block, the deed for which was first signed between the Ruakaka deed (16 February 1854) and Mangawhai, signed on 3 March 1854. The first signatures to the Waipu deed were affixed on 20 February 1854, meaning the omission of a similar clause in the deed for the block cannot have been a consequence of any instructions received to cease the practice. Either, therefore, the absence of a similar clause in the Waipu deed was a consequence of simple oversight on Johnson's part or had been done on his own initiative or in consequence of specific instructions received on the point. In the absence of any further reference to the ten per cent provision in any of the available official correspondence either to or from Johnson subsequent to the initial instructions of November 1853, the reasons for the omission remain something of a mystery. It would not seem unlikely, however, that the cause may have had something to do with the likely allocation of those lands to the Nova Scotian settlers on preferential terms.[896] But if such was the case then the owners of Waipu should surely have received a higher upfront payment in lieu of the longer-term benefits they were to be denied. There is certainly scant evidence of such a premium being paid the owners of

[894] Sinclair to Johnson, 7 November 1853, *Epitome*, C, p.55.

[895] Reader Wood (Deputy Surveyor General) to Colonial Secretary, 3 April 1854, *Epitome*, E, p.1; Extracts from Native Deeds of Conveyance: Auckland Ten Per Cents Secured to Natives, *Epitome*, E, p.3.

[896] See also Robert Hayes, 'Brief of Evidence…on the Mangawhai Block', (Report commissioned by the Crown Law Office), n.d., Wai-674, P5, pp.47-52.

Waipu.[897] On the contrary, the 2.4 pence per acre paid (based on later block area estimates of 30,000 acres) was niggardly even by contemporary Crown standards.[898]

McLean, who had formally taken over responsibility for land purchasing from the Surveyor General by this stage, appears to have been suitably impressed. On 18 May 1854 Johnson was in turn formally appointed to 'undertake negociations for the purchase of land in the Northern part of the Auckland Province', with instructions to 'use your utmost exertion to acquire from the Natives the whole of their lands within this District, which are not essential for their own welfare, and that are more immediately required for the purposes of colonization'.[899] Johnson was to use his own discretion as to which lands should be acquired first, but was reminded of 'the necessity of encouraging the Natives to act with greater fidelity in their land transactions than they have been recently in the habit of doing'. A 'careful, steady, and systematic arrangement of their claims, with a clear understanding respecting the external boundaries of the lands they dispose of, and the blocks they retain for their own use', would, McLean believed, mean 'many of the impositions they have been practising will be abandoned'. Johnson was to ensure wherever practical that reserves were bounded by natural features, and to encourage the practice of re-purchasing surveyed lots from the Crown out of the lands sold. McLean also reminded Johnson that '[i]n any treaty with the Natives for the cession of their lands, it is most desirable that they should fully comprehend its nature'.[900]

Johnson reported on 2 August 1854 that he had, in accordance with McLean's general instructions regarding reserves, 'purchased a tract of 1500 acres, having a frontage to a creek called the Takahiwae [sic], in order that the land occupied by the natives at

[897] On the background to the ten per cent clauses and their subsequent administration see Waitangi Tribunal, *Kaipara Report*, pp.124-128; Kirstie Ross, 'The 1854 Mangawhai Crown Purchase', (Report commissioned by CFRT), June 200, pp.50-55.

[898] Remarkably, the text of the Waipu deed refers to £350 as the total consideration, but only £300 is acknowledged as having been received. The remaining £50 was probably the sum which Te Tirarau and Hori Kingi Tahua had refused to accept. Both subsequently signed the combined Mangawhai and Waipu deed of 17 July 1854, which evidently included the £100 payment for Waipu they had demanded.

[899] McLean to Johnson, 18 May 1854, AJHR, 1861, C-1, p.52, [docs, vol.12, p.3885].

[900] McLean to Johnson, 18 May 1854, AJHR, 1861, C-1, p.53, [docs, vol.12, p.3885].

that place might be separated by that creek from the Government land'. A sum of £75 was accordingly paid for these purposes on 7 July 1854, though the 'Government land' which Johnson had described was actually the area 'surrendered' to the Crown for the 1845 muru at Matakana.[901] The ceded lands were then in the process of being taken up by settlers,[902] which probably influenced Johnson's decision. This may have prompted those with claims on the 'Government land' to seek compensation, since a week later a further deed was signed, purporting to extinguish the claims of Tirarau and Te Manihera to Poupouwhenua in return for the sum of £10.[903] Given the grossly inadequate description of the block boundaries contained in the deed, and the absence of any accompanying plan, it is difficult to determine what area this second deed was intended to encompass, though one 1856 return listed the Poupouwhenua deed as covering an area of just 200 acres, suggesting that it included only part of the estimated 1000-acre ceded block if at all.[904]

Further purchasing efforts at Whangarei were delayed by Johnson's failed mission to complete various negotiations in the Waikato district, but by November 1854 he was able to report the offer of a large block of land for the sum of £2000. Johnson estimated the Maungatapere block at between 18,000 and 20,000 acres and noted that a further condition of purchase was that the chief Tirarau should be guaranteed the pre-emptive right of purchase in respect of 1000 acres at a rate of ten shillings per acre.[905] Kemp recommended deferring a decision on the purchase until further information was received,[906] but just over a week later Johnson forwarded a sketch map of the block and further details on the proposed terms of its purchase. He now

[901] AUC 304, LINZ, [docs, vol.22, pp.7394-7398]; Turton's Deed No.100, Province of Auckland, pp.136-137, in Berghan Supporting Papers, vol.6, pp.3552-3553. Note: Turton wrongly described the area as being 1200 acres, evidently missing the fact that the plan showed two areas of 1200 acres and 300 acres each.

[902] See section 3.4.

[903] AUC 403, LINZ, [docs, vol.22, pp.7494-7501]; Turton's Deed No.101, Province of Auckland, pp.137-138, in Berghan Supporting Papers, vol.6, pp.3553-3554.

[904] Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, p.71, [docs, vol.12, p.3894]. As noted previously, however, the text of the deed suggested it encompassed all of the 'ceded' lands.

[905] Johnson to McLean, 12 November 1854, IA 1/1854/4026, Arch-NZ, [docs, vol.2, pp.587-589].

[906] Kemp, minute, 6 December 1854, IA 1/1854/4026, Arch-NZ, [docs, vol.2, p.587].

estimated the block at 18,500 acres, for which the sum of £1500 was requested, along with the pre-emptive right of re-purchase he had previously reported. Johnson urged that approval be given for the purchase without delay:

> as the acquisition of the land would be highly advantageous to the public, both from its geographic position and intrinsic value – as well as from the moral effect which would be produced on the Native mind by the example of an influential chief like Tirarau, in conjunction with several others who in the late war in the North fought against us about the sovereignty over the country, now disposing to the Crown for European colonization, a tract situated in the midst of one of their most valuable and cherished localities.[907]

The block's strategic value was partly attributable to the fact that it was accessible from both coasts and was situated on the best line of road between Whangarei and Northern Wairoa, in addition to having a good frontage on to the harbour suitable for the site of a township. Johnson also considered the transaction a straightforward one, despite the large size of the block, asserting that the title of the sellers was 'undisputed', 'it being the family hereditary possession of the Chief Tirarau and the late Iwitahi, father of Te Manihera'.

Johnson's apparent belief that an 18,500 acre block could be owned by just two chiefs was little short of fanciful. But with approval quickly given for the transaction to proceed,[908] and a deed duly signed by some 114 persons on 31 January 1855 it might be considered that such thinking had little effect on the outcome, a widely-signed agreement for the transfer of the block.[909]

This, at least, is the chronology of events as reflected in the Crown's own collection of deeds of cession (and in the published version of these compiled by Hanson Turton). But buried among the records of the Colonial Secretary's office is a further

[907] Johnson to McLean, 20 November 1854, AJHR, 1861, C-1, p.62, [docs, vol.12, p.3890].

[908] McLean to Johnson, 9 January 1855, AJHR, 1861, C-1, p.63, [docs, vol.12, p.3890].

[909] AUC 320, LINZ, [docs, vol.22, 7484-7488]; Turton's Deed No.103, Province of Auckland, pp.140-142, in Berghan Supporting Papers, vol.6, pp.3556-3558.

deed for the Maungatapere block, in both English and Māori, dated 19 January 1855, and signed by Te Tirarau and Te Manihera in Auckland.[910] This secret deed covered broadly the same area of land as the official one, with the exception of an additional reserve on the banks of the Otaika River included in the 31 January 1855 version. In both the official and secret deeds the vendors acknowledged 'the sum of One thousand five hundred pounds which we have this day received at the hands of John Grant Johnson'.[911]

This rather invites the question as to who received the £1500 and when. Was it paid to Te Tirarau and Te Manihera in the offices of the Land Purchase Department on 19 January 1855 or handed over at the 'official' deed signing on 31 January 1855?[912] And by which deed did the Crown assume it had extinguished native title over the block? Unusually, Johnson's report on the completion of the Maungatapere purchase was not included among the published papers of the Land Purchase Department and nor did he forward the deed of conveyance with his letter. Perhaps he felt it unnecessary to do so given that he wrote from the offices of the department in Auckland on 20 January 1855:

> I have the honour to inform you that the purchase of the Maunga Tapere Block has been this day completed, and that the sum of Five hundred pounds has been deposited in my hands by the Chief Tirarau for the selection of One thousand acres which he was authorised to make in the said block conformable to the 15[th] clause of Sir George Grey's land regulation...[913]

H.T. Kemp forwarded the secret deed to the Colonial Secretary on 9 April 1855, but not the official one, describing the former as 'the original Deed and Translation

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[910] Encl. in Kemp to Colonial Secretary, 9 April 1855, IA 1/1855/1132, Arch-NZ, [docs, vol.2, pp.614-619].

[911] The wording and capitalisation contains some minor variations between the two deeds. The quote is taken from Turton's Deed No.103, Province of Auckland, pp.140-142, in Berghan Supporting Papers, vol.6, pp.3556-3558.

[912] The Land Purchase Department offices appear the most likely Auckland venue for the 'secret' deed signing, since John Hobbs, a clerk in the department, witnessed the agreement.

[913] Johnson to Kemp, 20 January 1855, IA 1/1855/2726, Arch-NZ, [docs, vol.2, pp.688-689].

thereof, of a Block of land estimated by Mr. Commr. Johnson who purchased it, to contain 18000 acres, and for which the sum of £1500 has been paid into the hands of the Native owners, the two principal Chiefs having signed the Deed of Conveyance to the Government'. Kemp added that:

> Another Deed will be furnished by Mr. Johnson on his return to Whangarei from the Bay of Islands to which the signatures of nearly all the sellers will be attached: Having already reported the negotiations for the acquisition of this Block, it only remains for me to add, that there exists no impediment to its being surveyed and laid open for selection so soon as His Excellency and the Government may think fit.[914]

Given that the first deed had been signed in Auckland, one might wonder why it had taken the Land Purchase Department over three and a half months to forward this a short distance across the township to the Colonial Secretary's office, and why, after more than two and a half months had elapsed since the supposed signing of the official deed, this had still to be sent to Auckland. Clearly there is a bigger story here than is revealed by the documentary record. Indeed, the possibility that the official deed was fraudulent cannot be entirely dismissed. The key difference between the two deeds (other than the number of signatories and location of the deed signings) seems significant in this respect. Whereas the secret deed made no reference to any reserve at Otaika, the official one noted that 'the cultivations on the bank of the Otaika river, which has been marked with poles by Mr. Johnson' were to be excluded from the sale.[915] Neither deed was accompanied by a plan, but in September 1855 Johnson informed the Chief Commissioner:

> You will perceive on reference to the survey of the Manga Tapere Block at Whangarei that a small strip of land along the bank of the Otaika river, containing some cultivations, has been excluded from the purchase by the Natives.

[914] Kemp to Colonial Secretary, 9 April 1855, IA 1/1855/1132, Arch-NZ, [docs, vol.2, pp.611-613].

[915] Turton's Deed No.103, Province of Auckland, pp.140-142, in Berghan Supporting Papers, vol.6, pp.3556-3558.

> The back country to the Otaika river is of such a nature that it is almost useless without this frontage, which it always was the intention of the Chief Tirarau should be given into the Block, but to conciliate the Natives living on the cultivations, the cession was postponed for a time. During the recent negotiations for the Maunga Karamea Block, I made it part of the agreement for that Block that the land in question should be given up for the sum of One hundred pounds (£100) and I have now the honour to request that I may be furnished with authority to expend that sum in the liquidation of this claim. A very good reason for making this purchase is, that so long as the Natives have cultivations on the same side of the Otaika stream as the settlers who locate on the Manga Tapere Block, the cattle of the latter will be trespassing on the crops of the Natives, and it is advisable on that account to separate the one from the other by good natural boundaries.[916]

Johnson wrote as if all this was news, yet the exclusion of the Otaika River cultivations had been specifically mentioned in the official deed, supposedly signed more than seven months earlier on 31 January 1855. And given that he had at no point prior to 31 January 1855 reported any delay in completion of the purchase (or, indeed, noted the claim for a large reserve on the Otaika River), what did he mean by the cession being 'postponed for a time'?

If the only deed signed with respect to Maungatapere was the secret one of 19 January 1855 then it logically followed that objections from other claimants would most likely follow when the Crown attempted to take actual possession of the lands by means of survey. Johnson's September 1855 report could be taken as suggesting that this had indeed occurred, as a consequence of which he had sought to assuage the disgruntled claimants by giving up their claims to the lands they occupied in return for part of the payment on the adjacent Maungakaramea block for which he was then in negotiation. If that was indeed the case (and the evidence on this point either way is merely circumstantial at best) then the rort was merely extended into another block. If this was not the case, then the questions concerning the relationship between the deeds of

[916] Johnson to McLean, 10 September 1855, AJHR, 1861, C-1, p.66, [docs, vol.12, p.3892].

19 January 1855 and 31 January 1855, and who got paid when, still stand. In the Hawke's Bay district secret deals, done this time in Wellington with a select group of chiefs, had ultimately led to civil war amongst Māori there in 1857. Whether or not the official Maungatapere deed was fraudulent, the evidence suggests that similar tactics were being employed in the Whangarei district to overcome Māori opposition to land sales.

The methods used to acquire the Maungatapere block must surely raise some question marks as to the many other blocks purchased at Whangarei from the mid-1850s onwards for which minimal documentation is available. These include the large Ruarangi block, estimated to contain 35,000 acres, for which a deed was also signed in Auckland on 26 May 1855.[917] No plan was attached to the deed, no reserves were set aside within this huge block, and the money, though again acknowledged as being paid on the same day as the supposed deed signing, evidently was not handed over until September 1855. On 11 September 1855 Johnson reported that the Ruarangi block 'has now been finally paid for, and...the survey of the external boundaries can be proceeded with'.[918] A month later Johnson forwarded the deed of purchase to the Land Purchase Department from Whangarei. Both the date (four months after the supposed deed signing) and location from which it was sent suggest only some signatures on the deed were obtained in Auckland in May 1855, with the consent of other owners being gained some months later in Whangarei. Johnson noted that of the £700 purchase price he had paid half to 'the Natives of Whangarei', with a further £175 being paid to Ngāti Whatua in Auckland and the balance being reserved for 'the Ngatiwhatua of Kaipara', who he had intended visiting to obtain their signatures to the agreement. Meanwhile, Matikikuha had travelled to Auckland, where he had received the £175 directly from McLean.[919]

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[917] AUC 316, LINZ, [docs, vol.22, pp.7467-7471]; Turton's Deed No.104, Province of Auckland, pp.142-143, in Berghan Supporting Papers, vol.6, pp.3558-3559.

[918] Johnson to McLean, 11 September 1855, AJHR, 1861, C-1, p.66, [docs, vol.12, p.3892].

[919] Johnson to Acting Principal Commissioner, 10 October 1855, AJHR, 1861, C-1, pp.67-68, [docs, vol.12, pp.3892-3893].

Although the Ruarangi block was landlocked, Johnson's purchase efforts had thus far focused predominantly on obtaining frontage on to the Whangarei Harbour and adjacent coastline. His next purchase, that of the Manaia block, estimated at 5365 acres and purchased for £200 in July 1855, was no exception to this trend.[920] In this case, as with the first Crown purchases in the district encompassing the area claimed by Busby, the transaction was also complicated by the existence of an old land claim in the area. In September 1854 Johnson reported the offer to sell lands on the northern side of the harbour. An undefined grant for 414 acres had been issued to Gilbert Mair for lands in the same locality (held under derivative claim by the Auckland businessmen Brown and Campbell). Johnson noted that the undefined grant encompassed an area of about 3000 acres and the holders of the grant were reported to claim an area of up to 7000 acres by virtue of the grant. Their claim embraced 'a large portion of the most valuable water frontage of the harbour', Johnson added, 'and many Natives own different spots in and also adjoining to the said land which Lands they are willing to dispose of to the Crown'. Johnson therefore recommended that the limits of the grant be fixed under the terms of the Crown Titles Ordinance so that he could enter into negotiations with Māori in respect of the remainder of the lands.[921]

In March 1855 Johnson further reported on the offer of a 4000-acre block on the northern side of the harbour for which the sum of £200 was sought. He noted that the owners who had offered the lands had 'satisfied me that the Land they offer is not comprised within the external boundaries named in the deed of Grant to Gilbert Mair, and I have examined a copy of the deed of Grant, and find their statement to be correct'. Johnson added that he had, however, ascertained that Mair had purchased a portion of the land now offered from a Bay of Islands chief, Te Tau, and that the claimants to the block 'honourably admit the purchase of this portion from Te Tau', as a consequence of which they had allowed some of the Nova Scotian settlers now resident in the district to build a vessel there. This latter fact had, he believed, led Brown and Campbell into thinking that Mair had extinguished native title over the whole of the peninsula, although the owners would not allow any portion of their land

[920] AUC 314, LINZ, [docs, vol.22, pp.7457-7461]; Turton's Deed No.105, Province of Auckland, pp.143-144, in Berghan Supporting Papers, vol.6, pp.3559-3560.

[921] Johnson to Colonial Secretary, 18 September 1854, OLC 1047, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.23, pp.13687-13689.

to be occupied, with the exception of the spot where the vessel was being built. He therefore again urged settlement of the Mair claim, as 'until all such cases are settled in an equitable manner, we cannot hope to see the Natives sell all their lands and accept titles from the Crown for the portions which they wish to retain'.[922]

While Brown and Campbell disputed this version of events, in early July 1855 the 414-acre grant was fixed for them by William Gisborne, the Commissioner under the Quieting Titles Ordinance,[923] allowing Johnson to proceed with the deed signing for the Manaia block just days later.[924] In an interesting reversal of positions, a number of the Nova Scotian settlers, who had evidently purchased portions of the Manaia block from Brown and Campbell, subsequently brought a forcible halt to the survey of the block in December 1855, whilst local Māori deprecated their conduct.[925] The Crown had, however, ultimately gained more highly-coveted harbour frontage. Whangarei Māori were gradually being pushed back into the hills.

Johnson's purchase of the Maungakaramea block, later found to contain 17,462 acres, in October 1855 continued this trend. As noted previously, £100 of the £2800 consideration paid for the block was intended to extinguish claims over the Otaika reserve within the adjacent Maungatapere block.[926] Johnson was again heavily reliant on the support of Tirarau to push through with the transaction, reporting in August 1855 that he had received agreement from the chief 'to give up a sufficient quantity of land, as I requested, to enable me to recommend the payment of a sum of Two thousand seven hundred pounds, for the Maunga Karamea Block'. Only after consulting Tirarau, it would seem, had Johnson then 'seen the individual owners of the land in question', who had 'agreed to the propositions made by Tirarau, on the

[922] Johnson to McLean, 26 March 1855, OLC 1047, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.23, pp.13706-13710.

[923] W. Gisborne to Colonial Secretary, 4 July 1855, OLC 1047, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.23, pp.13716-13718.

[924] Johnson to McLean, 14 July 1855, OLC 1047, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.23, pp.13738-13739.

[925] Andrew Sinclair (surveyor) to Surveyor General, 8 December 1855, OLC 1047, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.23, pp.13787-13790.

[926] Johnson to McLean, 10 September 1855, AJHR, 1861, C-1, pp.65-66, [docs, vol.12, pp.3891-3892].

understanding that certain reserves for their own use are to be repurchased for them from the Government, at the rate of ten shillings (10s.) per acre'.[927] In September 1855 Johnson further reported that the owners wished to repurchase three reserves, of 1220 acres extent in total. These were all, he added, bona fide reserves intended for the use of the people residing on the lands in question or valued as wāhi tapu and 'would not from their intrinsic worth be purchased by Europeans, but are valued by the Natives...so that the public rather profit by the transaction than otherwise'.[928]

On 10 October 1855 Johnson duly forwarded the completed deed of conveyance to the Crown, signed by Tirarau and 18 others on 5 October 1855. He had, however, only paid £2000 over, and requested that the remaining £700 (along with the £100 required to extinguish remaining claims on Maungatapere) should be forwarded to him as soon as possible 'as Tirarau will not consent to divide the money until the whole amount is received'. Considering the sum paid for the block to be a 'large' one, he had, though, in the interim managed to more than half the area Māori would be entitled to repurchase under the terms of the agreement.[929] So much for the wāhi tapu and Māori settlements of no intrinsic value to Europeans.

Kemp, the Acting Chief Commissioner, replied to Johnson's request on 1 November 1855, declining to send the rest of the money for the time being, 'in consequence of the repeated applications to the Government of several influential persons of Ngatiwhatua tribe residing at Orakei'. Despite this, on 11 December 1855 a second deed was signed by Tirarau and 16 others and the remaining £800 paid over.[930] The published papers of the Land Purchase Department provide no reference to any authorisation for this second payment, though as was seen with the case of the Maungatapere purchase these were clearly purged of material deemed particularly sensitive prior to publication in 1861. However, an account published in *Te Karere*

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[927] Johnson to McLean, 24 August 1855, AJHR, 1861, C-1, p.65, [docs, vol.12, p.3891].

[928] Johnson to McLean, 10 September 1855, AJHR, 1861, C-1, p.66, [docs, vol.12, p.3892].

[929] Johnson to Kemp, 10 October 1855, AJHR, 1861, C-1, p.67, [docs, vol.12, p.3892].

[930] AUC 317, LINZ, [docs, vol.22, pp.7472-7476]; Turton's Deed No.107, Province of Auckland, pp.145-146, in Berghan Supporting Papers, vol.6, pp.3561-3562.

*Maori* in May 1856 does describe a hui convened between 'Ngati Whatua' and 'Ngapuhi' the previous December at Mangawhare. According to this report Tirarau and Parore had 'committed the very imprudent act of attending with a large body of men armed with guns'. Ngāti Whatua had alleged that one of these was aimed at their chief, Paikea, and that it was loaded with ball, but the government-sponsored newspaper alleged that 'the Ngatiwhatua wanted to quarrel with Tirurau [sic] and Parore, in order to advance their claims to the land, and used this firing as an excuse'. Subsequent to the hui, Ngāti Whatua had constructed a pā at Otakanini in expectation of an attack being launched against them by Tirarau, though as the newspaper noted, given Paikea was his first cousin, this was extremely unlikely. Instead, the 'Kaipara difficulties' were ultimately resolved by an agreement that 'no debate, and no proceedings of any sort respecting the disputed lands should take place at Kaipara, but, in order to avoid hostile collision, the whole question should be discussed at Auckland in the presence of the Land Commissioners'.[931]

The agreement over the process to be adopted did little to alter the underlying dispute regarding customary ownership, however, and in March 1856 T.H. Smith, the Acting Native Secretary, informed Governor Browne that:

> At Kaipara the purchase by the Government of the Maunga Karamea Block has indirectly led to the revival of a feud between two tribes both claiming the land in that District. At present it is uncertain whether the endeavour of the Government to mediate in the matter will be successful. Should strife begin and loss of life ensue, it is impossible to say to what extent we may become involved. Our neighbours the Ngatiwhatua would certainly join in the fray and probably might be inclined to push matters further than they otherwise would, relying upon our support and their own secure position – Auckland lying between them and their enemies.[932]

Nor had the agreement done anything to resolve the more immediate issue with respect to the Maungakaramea block, since in November 1856 McLean informed

[931] *Te Karere Maori*, 31 May 1856, docs, vol.18, pp.6062-6065].

[932] Smith to Browne, 1 March 1856, MA 4/2, Arch-NZ, [docs, vol.4, pp.1286-1287].

Johnson that Te Uri-o-Hau had declined to accept the £100 he had offered them in respect to the disputed land in Maungakaramea 'in order to remove all future difficulties in connection with that transaction'. The Chief Commissioner added that:

> it appeared to me that they felt apprehensive that Tirarau would make it a cause of quarrel with them if they accepted any payment on land sold by him and bordering so close on the Tangihua range, therefore it is perhaps as well that the matter should stand over, leaving Tirarau to adjust it himself.[933]

The failure to fully investigate and allow open debate on customary rights in various blocks prior to their purchase by the Crown was increasingly exacerbating tensions to a point where armed conflict would finally break out in 1862. Te Uri-o-Hau claimed interests not just in Maungakaramea, but also in the Ruakaka, Waipu and other blocks in the Whangarei district.[934] In fact, one witness told an 1863 inquiry that Matiu Te Aranui's dispute with Te Tirarau over Mangakahia (which had resulted in the deaths of at least three people the previous year) had commenced partly in consequence of the Maungatapere transaction, in respect of which 'he had never received anything'.[935] Yet Crown purchase agents persisted in their tactic of relying on particular chiefs to push through transactions.

In December 1855 Johnson had rather candidly admitted to McLean, 'Tirarau is my right hand – and I can run a muck [sic] with him'. Indeed, his discussion as to the method in which Maungakaramea was paid for, contained within the same letter, provided ample evidence of this. Johnson told McLean that he had 'had some disappointment about the Maunga Karamea Block which I purchased from Tirarau':

> there was delay in getting Hapuka's money, and when I went to leave for Whangarei after coming up here and waiting a fortnight the whole of the money was not forthcoming. I got however £2000 out of Kennedy after a little

[933] McLean to Johnson, 3 November 1856, AJHR, 1861, C-1, p.74, [docs, vol.12, p.3896].

[934] Anderson, p.77.

[935] *Te Karere*, 12 February 1863, cited in Thomas, p.191. The Mangakahia dispute will be covered in the report of David Armstrong. See also: Daamen et.al., 'Auckland', pp.180-185'; Anderson, pp.69-79; Thomas, pp.174-193.

> trouble, and left directions for Kemp to send down the remaining £700 by the next steamer. Kereihi[,] a Native woman...had claims on a part of it and insisted on having some of the money paid in Auckland. This Tirarau would not hear of, but with me demanding the money on one hand, and these Natives protesting against sending it on the other, Kemp well might be puzelled [sic] what to do, so he kept the money till I came up – my idea is that Kereihi and Matikikuha ought to go to Whangarei and assert their rights before Tirarau, but they will not do so. They must therefore depend upon Tirarau's justice and good feeling. I have accordingly at last sent White with the £700 and a strong letter to Tirarau telling him that the Government trust to his bringing the matter to a satisfactory issue, and urging him to devote a part of the payment to these claims.[936]

Elsewhere the allocation of payment money between hapū was a matter of public debate and discussion between the parties. At Whangarei Johnson was evidently content to leave the matter to his 'right hand' man to decide.

Despite, or perhaps because of, his reliance on Tirarau to push through Crown purchases at Whangarei, no transactions were completed in the district in 1856. Johnson was under increasing fire for his failure to secure more lands for the Crown, and it was not until June 1857, when deeds were signed in respect of three smaller blocks (Parahaki, Kaurihohore, and Whareora), that he was able to conclude any fresh purchases. Johnson had informed McLean in March 1857 that the surveys of the three blocks were now completed and that the government should determine what price was to be paid for each of these lands. McLean replied in early May 1857 and the three deeds were signed the following month in accordance with the payments McLean had stipulated.[937] The owners of Parahaki, a 4481-acre block described as being 'poor and hilly' but with a good situation adjacent to the Whangarei settlement and with good reserves of kauri, received £200 and one reserve marked on the plan of the block on 8

[936] Johnson to McLean, 7 December 1855, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3049-3050]. Johnson also noted in the same letter that 'the back boundary of the Maunga Karamea at Whangarei has been extended and defined to my satisfaction on my last visit to Tirarau'.

[937] McLean to Johnson, 9 May 1857, AJHR, 1861, C-1, p.77, [docs, vol.12, p.3897].

June 1857.[938] The deed for the Kaurihohore block of 4790 acres was signed on the same date.[939] Johnson considered this block excellent agricultural land, immediately adjoining the Whangarei township and easily accessible.[940] The sum of £550 was paid for the block but no reserves set aside.[941] The 4927-acre Whareora block, the deed for which was signed just over two weeks later,[942] on 23 June 1857, was one which had first been offered to the government in 1855, when an advance payment of £25 had been made to Wiremu Pohe and Hirini for the purpose of purchasing ploughs, 'to be paid back by a portion of our Land called Whare Ora, and the Awaroa at Whangarei, when the purchase of this Land is completed by the government'. Johnson reported in the same year that he had recommended the purchase of the block to the government 'so far back as 1853, but the opposition raised by a portion of the Native population at that time to the purchase of land was so great, that the sale could not be effected without the risk of a collision between those who were in favour of, and those who were against, disposing of their joint property to the Crown'.[943] The block was described as being of 'very fair quality and suitable for agricultural or pastoral purposes'.[944] The total price paid for the block, including the 1855 advance, was £250.

Privately, Johnson's relief was palpable. He wrote to McLean on 8 June 1857 to inform him of the completion of the first two transactions, declaring 'I have done something at last definite this year'. The Kaurihohore block, he added, 'which cost £550 will cut up into farms and realize £3000 if there is any demand for Land'.[945] But

[938] AUC 303, LINZ, [docs, vol.22, pp.7390-7393]; Turton's Deed No.108, Province of Auckland, pp.146-147, in Berghan Supporting Papers, vol.6, pp.3562-3563.

[939] AUC 313, LINZ, [docs, vol.22, pp.7449-7452]; Turton's Deed No.109, Province of Auckland, pp.147-148, in Berghan Supporting Papers, vol.6, pp.3563-3564.

[940] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.83, [docs, vol.12, p.3900].

[941] There is, however, reference to a possible re-purchased portion, known as Paranui and containing 106 acres. See Andrew Sinclair to Chief Commissioner, 17 August 1857, *Epitome*, C, p.80.

[942] AUC 312, LINZ, [docs, vol.22, pp.7443-7448]; Turton's Deed No.110, Province of Auckland, pp.148-149, in Berghan Supporting Papers, vol.6, pp.3564-3565.

[943] Johnson to McLean, 11 September 1855, AJHR, 1861, C-1, p.67, [docs, vol.12, p.3892].

[944] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.83, [docs, vol.12, p.3900].

[945] Johnson to McLean, 8 June 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3057-3059].

perhaps because all three blocks were outside the sphere of influence of Te Tirarau (who was not a signatory to any of the three deeds) Johnson at least appears to have exercised slightly more care in paying over the money than usual. He had delayed the signing of the Parahaki and Kaurihohore deeds for four days because some of the principal claimants had yet to arrive at the venue for the signing, and when the deeds were signed he had chaired a discussion as to the appropriate division of the purchase money.[946] Likewise, the signing of the Whareora deed was postponed until Johnson received notice from an important claimant who was absent from the meeting that he should not await his arrival before concluding the transaction.[947] Likewise the purchase of the 3752-acre Tamaterau block (to which Tirarau was again not a party) for the sum of £200 on 2 October 1857 appears to have been a relatively troublefree transaction.[948]

The contrast with the purchase of the 1372-acre Kaiwa block (sometimes also spelt 'Kaiawa') on 6 November 1857, the deed for which was signed solely with Tirarau as a consequence of failed efforts to acquire a much larger block at Parua Bay on behalf of the Nova Scotian settlers, could not have been greater. Indeed, the whole Parua Bay saga represents Crown purchasing in the north at its most sordid and corrupt, with officials (including McLean) deliberately riding roughshod over the interests of other owners in an effort to secure the lands for the Nova Scotian group.

In March 1857 John Munro, the leader of a second group of Nova Scotians who had decided to follow Norman McLeod's adherents to New Zealand, wrote to Donald McLean regarding the selection of a suitable site for their settlement. Munro commented with respect to McLean's suggestion that the new group might be settled on the Maungakaramea block that there were 'insuperable barriers' that made this an impossibility:

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[946] J.G. Johnson, Diary of District Commissioner Whangarei, 4 June 1857, 8 June 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3431].

[947] Johnson, Diary of District Commissioner Whangarei, 22 June 1857, 23 June 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3432].

[948] AUC 302, LINZ, [docs, vol.22, pp.7386-7389]; Turton's Deed No.111, Province of Auckland, p.149, in Berghan Supporting Papers, vol.6, p.3565.

> People who require every exertion and study to maintain their families otherwise would be ill prepared to remove into the interior where they would have nothing to subsist on but air after getting there. But not so Parua Bay which is far more adapted for their present circumstances as then they could sit [sic] their houses to many things such as firewood or sawing Kauri for market and fishing to help maintain their families untill [sic] they got a crop out of the ground.[949]

Munro added that he had always lived close to the sea and, although believing Maungakaramea might one day become a 'Garden of Eden', could not be persuaded to settle there unless the government promised an area of 75,000 acres exclusively for the Nova Scotians and assisted him to spend part of his time persuading more immigrants to come and live on the lands. There was, however, a further warning in his message, with Munro adding:

> I am afraid if the Govt. of New Zealand do not look about them in this matter, the Govt. of the Cape of Good Hope will soon turn the attention of the Nova Scotians to that quarter as Sir George Grey is determined to spare no money for that purpose.

Munro was thus clearly warning McLean that if the government failed to secure Parua Bay for the Nova Scotians they would seriously consider migrating elsewhere. McLean was urged to 'speedily finish the purchase of Parua Bay with the Natives in order to set the Nova Scotians to work as soon as possible'.

When the Parua Bay lands had first been offered for sale is not entirely clear from the documentary record, though it seems likely that the first steps towards initiating a purchase had been taken in February 1857. McLean had visited the district at that time, along with Munro, who had evidently arrived to inspect the Maungakaramea

[949] John Munro to McLean, 3 March 1857, McLean Papers, folder 470, ATL, [docs, vol.10, p.3224].

block as to its suitability for the proposed settlement.[950] It seems more than likely that Munro had taken the opportunity, after inspecting the Maungakaramea block and finding it largely unsuitable, to inspect other sites in the district, since five days after he and Johnson (and possibly McLean) had travelled to Maungakaramea a hui was convened at Whangarei, attended by both Johnson and McLean, 'relative to the cession of a block of Land at Parua'. Johnson's diary recorded that Tirarau, Te Manihera, Hori Kingi Tahua and other chiefs had been present at this meeting, but contains no indication as to the outcome of the hui.[951]

McLean wrote to Johnson just three weeks after the letter from Munro was sent, requesting to know as a matter of priority 'what progress you have made in your negotiations for Parua Bay'.[952] Just a few days after this Johnson recorded in his diary that a chief who had promised to point out the boundaries of Parua had failed to show up, though the following day 'Isaac of Parua volunteered his services and being one of the owners of the land we accepted of them'.[953] On 26 March 1857 Johnson and Andrew Sinclair, the surveyor, commenced the survey.[954] Johnson returned to his station at Otaika two days later, but on 3 April 1857 learned that Sinclair and his party had also returned from Parua, having been 'suddenly surprised' and 'turned off the ground' by a chief named Hakiro, who had been absent from the district at the time the survey commenced.[955]

Sinclair informed McLean a short while later that he had remonstrated with the chief 'on the foolishness of his conduct, and to shew him that there was no just reason for

[950] Johnson, Diary of District Commissioner Whangarei, 14 February 1857, 19-20 February 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, pp.3417-3418].

[951] Johnson, Diary of District Commissioner Whangarei, 25 February 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3418].

[952] McLean to Johnson, 21 March 1857, AJHR, 1861, C-1, p.76, [docs, vol.12, p.3897].

[953] Johnson, Diary of District Commissioner Whangarei, 24-25 March 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3421].

[954] Johnson, Diary of District Commissioner Whangarei, 26 March 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3421].

[955] Johnson, Diary of District Commissioner Whangarei, 3 April 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3422].

my leaving the place. I had been invited by a large number of chiefs and others to survey the land before it was bought by the Government, and it was absurd for him to oppose the wish of all the other Natives'. Hakiro, however, had responded that 'his wishes had not been consulted and that it was a [w]rong thing of me to commence work without having given him notice'. The chief had, Sinclair added, been much pressed by others to allow the land to be sold, 'but without effect – his great fear being that he will not participate in the payment'.[956]

Johnson wisely called a halt to the survey, and informed McLean that 'although Hakiro is only one man, still we cannot force him to sell his claim against his consent' and that he could see no other course but to wait until Hakiro allowed the survey to proceed.[957] Johnson's patient and understanding approach bore fruit when on 14 April 1857 Hori Kingi Tahua, who had been anxious to see the survey proceed, returned from Parua with Haimona Te Hakiro's son to say that the difficulty had been settled and the survey would be allowed to recommence provided the chief was present during its commencement.[958]

Johnson returned to Parua Bay a few days later to oversee the recommencement of the survey and spent the first few days in the company of Hori Kingi Tahua, Pohe and Hakiro 'adjusting their claims to the land'.[959] Those adjustments were, as it turned out, substantial. On 26 May 1857 Johnson officially informed McLean that:

> Although the attempt to obtain a large block has been for the present unsuccessful, by dealing with it in separate portions, the acquisition of the whole will eventually take place; and…through the influence of George King

[956] Andrew Sinclair to McLean, 9 April 1857, McLean Papers, folder 575, ATL, [docs, vol.10, pp.3276-3278]. Emphasis in original.

[957] Johnson to McLean, 7 April 1857, AJHR, 1861, C-1, p.76, [docs, vol.12, p.3897].

[958] Johnson, Diary of District Commissioner Whangarei, 14 April 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, pp.3423-3424].

[959] Johnson, Diary of District Commissioner Whangarei, 18 April 1857, John White Papers, folder 1 (Māori land claims), MS-Copy-0765-01, ATL, [docs, vol.10, p.3425].

> Tahua, I have been enabled to make a survey of the part of the Parua block having frontage to Whangarei harbour.[960]

Johnson noted that this 'exceedingly valuable piece of land…very much desired by intending settlers' contained 1372 acres and was offered for sale by Tahua and Te Hakiro, who had obstructed the survey of the much larger block. He requested authority to purchase the scaled-back block for up to £150 and observed that, as this portion of the larger block had been 'given up by the Natives to George King Tahua to satisfy his claim, the question will be more easily dealt with', and would lead other owners, who were presently holding back, 'lest King and Tirarau should appropriate too large a share to themselves', to offer the remainder of the lands for sale.[961]

Johnson's request for authority to purchase the 1372-acre Kaiwa block (as the portion of Parua Bay offered for sale was now called) was approved on 25 June 1857.[962] John Williamson, the Auckland Superintendent to whom the advisability of the purchase was referred, had recommended it acquisition, at the same time urging that the 'the whole block, of which Kaiwa forms a portion, should be purchased from the Native owners with the least possible delay as a number of Immigrants from Nova Scotia desire to establish themselves in that locality'.[963] Johnson, meanwhile, informed McLean privately just a few weeks later that:

> Old Munro was up here with me – he is intent on the point in the harbour – opposite Parua – it is a most ticklish place to settle with the Natives about, and I am determined not to make a false step, even though me not doing so will keep a Highland Laird waiting, particularly as no public good will result, unless giving Munro a very valuable property on easy terms be considered a public good. The rest of the block might do for other purposes but it does not suit the N.S. [Nova Scotians] and I know that the rest of the people will not

[960] Johnson to McLean, 26 May 1857, AJHR, 1861, C-1, p.78, [docs, vol.12, p.3898].

[961] Johnson to McLean, 26 May 1857, AJHR, 1861, C-1, p.78, [docs, vol.12, p.3898].

[962] T.H. Smith to Johnson, 25 June 1857, AJHR, 1861, C-1, p.78, [docs, vol.12, p.3898].

[963] J. Williamson to Colonial Secretary, 24 June 1857, T 1/1857/930, Arch-NZ, [docs, vol.3, pp.903-904].

> locate upon it. They cannot get the part which would suit them, being the Native Settlement at Parua. To suppose the Natives will leave their homes to suit their convenience is quite absurd.[964]

It soon emerged, however, that Hori Kingi Tahua was unwilling to accept the £150 asked for Kaiwa, and instead was holding out for double this amount. Munro wrote to McLean on 9 June 1857 that 'altho' I am confident if all the block were bought at the same time the average price per acre will be a mere trifle should the £300 now asked be given, the rest of the block I understand will soon follow which will not be much short of 20,000 acres. I trust you will obviate any difficulty that may be in the way of immediately extinguishing the native title.'[965] Munro claimed that as the block was only adapted for small farms, with the exception of the point, there would be no loss to the public interest by reserving the whole area for the Nova Scotians. The Auckland Superintendent had, he added, suggested he was sympathetic to their cause but his hands were tied by the absence of any law under which he could reserve the block for the group, whereas the governor had the Waipu precedent to go by. If the Kaiwa block could be purchased as soon as possible, Munro believed, 'no doubt the rest will soon follow as intimated to me by Mr. Johnson and others'. Remarkably, Munro offered to personally loan the government the money to complete the purchase, for which he could be reimbursed in land when the rest of the Parua Bay block was acquired (specifically, he suggested, with the point – the most valuable of the lands).[966] Another dour Presbyterian with a sharp eye for a good business deal had evidently entered the New Zealand scene, even if his suggestion to McLean bordered on a form of bribery.

On 25 September 1857 McLean wrote officially to Johnson, noting that he was 'given to understand' that the owners of Kaiwa, including Hori Kingi Tahua, had demanded

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[964] Johnson to McLean, 8 June 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3060-3061]. Emphasis in original.

[965] Munro to McLean, 9 June 1857, McLean Papers, folder 470, ATL, [docs, vol.10, pp.3228-3229].

[966] Munro to McLean, 9 June 1857, McLean Papers, folder 470, ATL, [docs, vol.10, pp.3229-3230].

an additional £150 for the block and upbraiding the District Commissioner for his failure to report the breakdown in negotiations much earlier.[967] McLean added that:

> The Natives are evidently aware of the importance of this position, situated as it is in the centre of 100,000 acres of Crown territory, and it is evident from what Tirarau informs me that a further concession of Fifty pounds (£50) will be necessary to ensure a speedy and satisfactory completion of the purchase; under all the circumstances of the case, and considering the urgent necessity for acquiring this block without delay, His Excellency has directed me to cause a further advance of Fifty pounds (£50) to be made for this purchase, and you will be good enough to confer with Tirarau and have a conveyance of land in question made without further delay.[968]

Given that McLean had acknowledged Hori Kingi Tahua as 'the principal claimant' and was aware that he had demanded £300 for the block, his suggestion that Johnson should confer with Tirarau and have a conveyance of the land at the sum of £200 completed without delay seems curious to say the least.

Johnson reported a few days later on the background to Tahua's claim to the Kaiwa block. The land in question, he noted:

> belongs to Pohe's tribe, and is also partly claimed by an old Chief named Horuona who resides near it. On the extreme point of the peninsula is an old pa which was taken by the Ngatiruanui in former times, on which occasion some ancestors of Tahua and Tirarau were killed. On this account George King Tahua set up a claim to the point, about 200 acres in extent; and in order to make his claim sufficiently large for the Government to purchase the land, obtained from the other claimants an extension of the boundaries to 1372 acres, upon the condition that the real owners were to receive a portion of the payment, which I promised them should be faithfully carried out.[969]

[967] McLean to Johnson, 25 September 1857, AJHR, 1861, C-1, p.79, [docs, vol.12, p.3898].

[968] McLean to Johnson, 25 September 1857, AJHR, 1861, C-1, p.79, [docs, vol.12, p.3898].

[969] Johnson to McLean, 30 September 1857, AJHR, 1861, C-1, p.79, [docs, vol.12, p.3898].

Johnson added that although Tahua had been authorised by the owners to make the sale, they had warned that unless these conditions were complied with they would resist the occupation of the land. He had therefore determined that the only way in which he could ensure the conditions were complied with was:

> by taking care that the signatures of the other claimants are obtained to the deed before paying the money, by which means Tahua will be compelled to share the payment with them, or else they will not sign the deed; and I do not feel justified in paying the money over to Tahua or Tirarau alone, and leaving them to settle this question, without your special instructions to that effect.[970]

What happened next, based on the official documentary record, would seem extraordinary in the light of the clear statements Johnson had made concerning the ownership of the block and the need to obtain all of the signatures to the deed for Kaiwa to ensure the payment was fairly distributed. Yet if the official record is largely silent as to the background to the signing of the deed for Kaiwa on 6 November 1857, by which Tirarau alone conveyed the block to the Crown, then Johnson's private correspondence is somewhat more revealing.

Johnson informed McLean on 5 October 1857 with respect to the Parua Bay negotiations that:

> The case is a very peculiar one – it has resolved itself into an extra-ordinary fix. Tirarau wants the whole of the money without any restrictions for himself, and the body of the Natives wish it to be divided among the claimants in the ordinary way, in which they are supported by previous engagements with me – which would not have been made had I known that Tirarau was going to interfere in the matter.

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[970] Johnson to McLean, 30 September 1857, AJHR, 1861, C-1, p.79, [docs, vol.12, p.3898].

> It was very kind of him certainly to get £50 more for himself and appropriate it to his own purposes as well as the £150 previously authorised...You allude in your letter to the fear of destroying my influence by making a final arrangement without reference to me. Now I have very little influence with any body and none at all with Ti, who is much too wily a customer not to see at once that a District Commissioner as at present constituted is a mere agent for paying money when sent to him – at the direction of the head – and he has had no transaction with me for the last two years.[971]

Johnson may have considered himself a mere dispenser of money in return for land, but the question was, who would receive the cash for Kaiwa in the light of Tirarau's insistence on receiving the entire sum himself. On this point, Johnson noted that:

> If the money is paid to Ti, the Land will be acquired no doubt. The opposition are not strong enough to withstand him – and there will be an end of the matter. It will be a triumph of might over right. I have no voice in the matter. I leave it for you to decide. Tirarau never moves from his point – it will be useless sending instructions imposing any conditions upon him. The ordinary course would be for him to receive the money, if the other parties consented to his doing so and acting for them, and in proof of their acquiescence they sign the conveyance. In all the former purchases he submitted to this – but as the case now stands you must, if you consider the Land, or the conciliation of Tirarau, worth waiving all former precedent – and the rights of the Natives – as well as throwing overboard the district Commr – send me authority to give him the money.[972]

Johnson added that if the consent of all parties was made a sine qua non of the deal, then the land would almost certainly be lost to the Crown, since Tirarau was unlikely to concede the point. Was the money to be paid over to Tirarau unconditionally, he

[971] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3065-3067].

[972] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3067-3068].

asked McLean a second time, and all established precedents overturned? Was might to triumph over right?

Ultimately Johnson was to answer his own question in favour of the former. On 16 November 1857 he wrote privately to McLean that he had been anxiously awaiting official instructions with respect to the £200:

> but unfortunately it has not arrived in time to relieve me from the dilemma in which I was in. Tirarau came over to see me personally last week on the subject and insisted upon having the money – he was very civil and friendly – for the purpose of attaining his object, and I saw nevertheless that if I withheld it that a rupture of friendly relations between myself and him would be caused which might have very baneful effect in any future operations which I may be engaged in. He would not wait until I received an answer from Auckland, but was willing to agree that the money should remain untouched in his possession until the final decision of the Government was obtained – under these circumstances...I judged it to be less productive of injurious consequences to pay the money to Tirarau than it would be to withhold, as he threatened either to tapu the place for ever, or seize upon it and the adjoining country, both of which courses would only have further complicated the question, and I accordingly paid Tirarau on behalf of all parties concerned and took a conveyance from him of the Land.[973]

With justice jettisoned in favour of obtaining the lands, it only remained to break the news to the other owners. Johnson reported that Pohe had absorbed the information calmly, whilst Te Hakiro – who, rather poignantly as it turned out, had earlier opposed the sale of the land for fear that he would not participate in the payment – was understandably rather more indignant upon hearing of the purchase.

In his official report on the purchase, written on 19 November 1857, Johnson noted that Tirarau 'promises to procure the signatures of the other claimants to the Deed,

[973] Johnson to McLean, 16 November 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3077-3079].

and pay them a share of the money for the land'. He had said nothing about this in his private letter, and in fact Tirarau's remained the sole signature on the deed. Nevertheless, Johnson claimed that the opposition of Pohe's party to Tirarau receiving the money had 'much diminished', whilst saying nothing of the ongoing opposition from Te Hakiro. It would, he added:

> have been more agreeable to me to have received your instructions officially notified before taking this step; but Tirarau was so impatient of any delay, and so bent on an immediate compliance with his wishes, and I being apprehensive of his quarrelling with the other claimants who had opposed him, and still further complicating the question, that I felt satisfied the course I took was the best for the public welfare.[974]

The wily McLean had evidently failed to send the official instructions Johnson was so desperately awaiting. But now that the dirty deed had been signed the question was whether a deed signed by Tirarau alone would be deemed sufficient to proclaim native title as being extinguished, allowing the lands to be handed over to the Auckland Province for disposal. John Munro, who had been elected as a member of the Auckland Provincial Council in November 1857,[975] had his own thoughts on the matter, writing privately again to McLean in February 1858. Last time it had been the Cape of Good Hope, this time he threatened to remove all his followers to Otago if the lands they sought were not made available:

> I must soon go some where else while I have anything left to enable me to do so, do you not think I would have some change in Otago where Capt. Cooper says in his Book no other man would have a chance but a Highland man. I understand they would send a vessel to transfer the whole of us to that place and thereby direct those who are to follow us in large number to Otago. If I am

[974] Johnson to McLean, 19 November 1857, AJHR, 1861, C-1, p.80, [docs, vol.12, p.3899].

[975] G.H. Scholefield, *A Dictionary of New Zealand Biography*, vol.2, Wellington: Department of Internal Affairs, 1940, p.109.

> not enabled to take possession of the Point by the time the Council rises, I am determined not to go back to Wangarei...[976]

Johnson was instructed the following month to 'use your endeavours to effect a complete settlement of the claims of the Natives to the Kaiawa block, recently purchased by you, in order that it may be handed over to the Province with the least possible delay, as emigrants from Nova Scotia are now waiting to settle upon it'.[977] Just over a week later, Johnson reported in relation to a letter of complaint concerning the Kaiwa purchase from one of those who had been excluded from the transaction. His letter suggests that, although McLean had failed to issue official instructions with respect to Tirarau's claim to the whole of the purchase money, the Chief Commissioner had had a decisive say behind the scenes in approving the deal done. Johnson noted that the money for Kaiwa had been paid to Tirarau alone, 'on the recommendation of the Chief Commissioner, who has confidence in the integrity of that Chief'. He added that Tirarau was 'one of the most difficult Chiefs to deal with of any in the country':

> And in the present instance, the reason I paid the money was that he considered it had been promised to him by Mr. McLean (without reference to me) and he had stated this before all the Natives, and had also made up his mind to the disposal of it. Had it been withheld at my instance, he would have considered his dignity lowered,– he would not only have stopped the sale of the 1,372 acres, but also that of 16,000 acres adjoining to it, the survey of which is now nearly completed, and perhaps put a veto on the sale of all the land in the district.[978]

The £200 received for Kaiwa had yet to be divided amongst the claimants, and Tirarau had informed neither Johnson nor those who had been excluded from the deed what his intentions with respect to this were. Johnson noted that all of the other claimants to the block had so far submitted to this without remonstrance, with the

[976] Munro to McLean, 1 February 1858, McLean Papers, folder 470, ATL, [docs, vol.10, p.3232].

[977] Smith to Johnson, 15 March 1858, AJHR, 1861, C-1, p.85, [docs, vol.12, p.3901].

[978] Johnson to McLean, 22 March 1858, AJHR, 1861, C-1, p.86, [docs, vol.12, p.3902].

exception of Hakiro and his sons, to whom he considered a £25 payment to be an equitable allocation. He considered that 'possession might be taken of the land by Europeans, without any interruption on the part of the Natives, for their fear of Tirarau would prevent their taking any active measures: but, while this state of things exists, I cannot certify that the Native Title is extinguished'.[979]

Privately, Johnson also confirmed that Hakiro was the only one continuing to actively oppose the Kaiwa rort.[980] But with the pressure on to proclaim the extinction of native title over the block in order to facilitate its settlement by the Nova Scotians, Johnson and McLean now began a campaign to minimise or reject the claims of those who had previously been acknowledged as owners of Kaiwa. On 17 May 1858 Johnson reported on the outstanding claims on the block, as requested of him in March 1858. According to Johnson, 'the principal obstacle to the final settlement of this question' had now been overcome, with Hata Kingi and his party (presumably including his father, Te Hakiro), 'having withdrawn their opposition to Tirarau, in compliance with my solicitations to that effect'.[981] Johnson failed to note what had persuaded this group, who had consistently asserted their rights in the block, to withdraw their claim, though shortly after the deed signing Johnson reported that Tirarau had threatened to expel Te Hakiro from the district if he persisted in his claims on the land.[982] A second group, 'also living in Parua Bay', Ngāti Tu, had also, under the influence of Wiremu Pohe, 'signified their willingness to be satisfied, whether Tirarau divides the payment of the land with them or not'. Again, Johnson failed to provide any explanation as to what had induced them to abandon their claim. He did note, however, that:

> A third party...including the Chief Edward William Pohe himself, still clamour that a share of the money in the possession of Tirarau be paid to them. The claims of this last party are, in my opinion, very vague and uncertain, arising from the hereditary right advanced by an old man, named Hine Waru, derived

[979] Johnson to McLean, 22 March 1858, AJHR, 1861, C-1, p.86, [docs, vol.12, p.3902].

[980] Johnson to McLean, 24 March 1858, McLean Papers, folder 354, ATL, [docs, vol.10, p.3092].

[981] Johnson to McLean, 17 May 1858, AJHR, 1861, C-1, p.86, [docs, vol.12, p.3902].

[982] Johnson to McLean, 16 November 1857, McLean Papers, folder 354, ATL, [docs, vol.12, p.3080].

> through some undefined ancestry belonging to the former – but now extinct tribe of Ngati Tahuhu, who inhabited this district at one time, but which appears to apply equally to almost every spot of land in this part of the country.[983]

When all else failed, the old Mahurangi card proved a useful one to play, since an 'extinct tribe' could, by definition, hardly have claims to ownership. The only problem with this argument was that Johnson had acknowledged claims based on rights of inheritance from Ngāi Tahuhu from the time of his very first purchases in Whangarei, dating back to 1854.[984] It was perhaps a little late in the day to deny this as a valid basis upon which to claim interests four years later, even at the risk of delaying the settlement of McLean's fellow Highlanders on the lands so unscrupulously purchased from Tirarau alone.

Even so, Johnson declared that if the matter was up to him to decide he would reject Pohe's claim as invalid, despite the absence, he observed, of any firm guidance or instructions as to what constituted valid customary claims generally. The 'only way to attain the object desired' in the Kaiwa case, he believed, was to 'procure' the withdrawal of the outstanding claim on the block, 'as any attempt to induce Tirarau to divide the money in opposition to his pre-arranged plans would be quite unavailing'. He now left it to McLean to determine 'whether the Native title can be proclaimed to have been extinguished at once, and the land thrown open to the settlement of the Nova Scotian immigrants, or whether it will be necessary to await the relinquishment of this outstanding claim – or, in my opinion, pretended claim – on the part of the Natives'.[985]

Less than a fortnight later, though, Johnson was able to report that Eruera Pohe had consented to the occupation of the Kaiwa block by Europeans, 'although he still expects to receive a portion of the money from Tirarau. The question would now appear to be entirely a Native one between themselves, and I do not see any reason

[983] Johnson to McLean, 17 May 1858, AJHR, 1861, C-1, p.86, [docs, vol.12, p.3902].

[984] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.51, [docs, vol.12, p.3884].

[985] Johnson to McLean, 17 May 1858, AJHR, 1861, C-1, pp.86-87, [docs, vol.12, p.3902].

why the land should be any longer withheld from settlement on account of Native opposition.'[986] Pohe had withdrawn his opposition to occupation of the block, but not his claim on the land. McLean now usefully chimed in, however, ludicrously claiming to have conducted a thorough investigation into the chief's claim as a result of which he had found this to be without foundation:

> The claim adduced by Pohe, as being derived from one of his ancestors whose rights or occupancy according to Maori custom cannot be substantiated, is so vague and unsatisfactory that it appears no compensation should be made to Pohe, inasmuch as that Chief failed to produce any evidence of his having a valid right of ownership over the land, after a careful investigation which I made when he was last in Town. In fact the impression left on my mind by Pohe was that he was endeavouring to extort money from Te Tirarau or the Government for a claim, the justice of which he could not substantiate.[987]

McLean accordingly recommended that the Kaiwa block, 'which is so much desired by the Nova Scotia settlers, should be proclaimed in the usual manner'. Governor Thomas Gore Browne signed the proclamation extinguishing native title over the Kaiwa block at Government House in Auckland the following day.[988] The Chief Commissioner commended Johnson for the 'very satisfactory' way in which opposition to the Kaiwa sale had been handled, thus bringing one of the most dishonest Crown purchases conducted anywhere in New Zealand in the pre-1865 period to what Crown officials considered a more than satisfactory conclusion.

Johnson's efforts to acquire the rest of Parua Bay, perhaps understandably, broke down in mid-1858. Although he had offered the sum of £600 for an area estimated at 20,000 acres, the claimants to the land demanded £1460.[989] Perhaps they felt themselves deserving of a higher price, having been swindled out of their portion of

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[986] Johnson to McLean, 29 May 1858, AJHR, 1861, C-1, p.87, [docs, vol.12, p.3902].

[987] McLean, memorandum, 4 June 1858, AJHR, 1861, C-1, pp.87-88, [docs, vol.12, pp.3902-3903].

[988] *New Zealand Gazette*, 15 June 1858, no.18, p.85, [docs, vol.24, p.8173].

[989] Johnson to McLean, 6 July 1858, McLean Papers, folder 354, ATL, [docs, vol.10, p.3097]; McLean to Johnson, 8 September 1858, AJHR, 1861, C-1, p.88, [docs, vol.12, p.3903].

the Kaiwa purchase money. Johnson did, though, manage to complete a further four purchases at Whangarei before being replaced as District Commissioner by John Rogan. The first of these, for the 11,108-acre Te Mata block, was signed on 2 February 1858.[990] McLean had approved purchase of the block at a price not exceeding £700 in December 1857, though Johnson managed to acquire it for just £600.[991] Andrew Sinclair had completed the survey of the block (also referred to as 'Mangapai' in some correspondence) between September and December 1857.[992] Johnson described the land as suitable for agricultural and pastoral purposes, the greater portion of it being hilly, though well timbered and with some water frontage on to the Whangarei Harbour.[993]

The purchases of the Whauwhau block (1348 acres) and Te Kamo block (296 acres) were approved on 15 February 1858 and both deeds executed eight days later.[994] The Te Kamo block, for which the sum of £50 was paid, was described by Johnson as agricultural land with rich volcanic soil, and adjoining the settlement at Whangarei.[995] Three members of Te Parawhau signed the deed.[996] The Whauwhau block, for which the sum of £100 was paid to four signatories,[997] was agricultural and timber land, adjoining the property of Sir Osborne Gibbs, with whom Johnson was evidently in competition with in respect to the same land.[998] In November 1857 Johnson informed McLean privately that Lady Gibbs had 'very imprudently told the Natives that Sir

[990] AUC 306, LINZ, [docs, vol.22, 7404-7407]; Turton's Deed No.113, Province of Auckland, pp.150-151, in Berghan Supporting Papers, vol.6, pp.3566-3567.

[991] McLean to Johnson, 21 December 1857, AJHR, 1861, C-1, p.81, [docs, vol.12, p.3899].

[992] Andrew Sinclair to McLean, 27 September 1857, 16 November 1857, McLean Papers, folder 575, ATL, [docs, vol.10, pp.3281, 3290-3291].

[993] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.82, [docs, vol.12, p.3900].

[994] Rogan (for Chief Commissioner) to Johnson, 15 February 1858, AJHR, 1861, C-1, p.85, [docs, vol.12, p.3901].

[995] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.84, [docs, vol.12, p.3901].

[996] AUC 284, LINZ, [docs, vol.22, pp.7351-7353]; Turton's Deed No.114, Province of Auckland, pp.152-153, in Berghan Supporting Papers, vol.6, pp.3568-3569.

[997] AUC 285, LINZ, [docs, vol.22, pp.7353-7354]; Turton's Deed No.115, Province of Auckland, pp.153-154, in Berghan Supporting Papers, vol.6, pp.3569-3570.

[998] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.84, [docs, vol.12, p.3901].

Osborne had gone to Auckland to complain to the Governor about me'. Johnson in turn complained that Gibbs, a Legislative Councillor, 'was ignorant of one of the fundamental Laws of the Colony that private purchase is prohibited when every little ragged Native boy knows that much'. He reported that Gibbs was rumoured to believe he had found gold on the block in question, adjacent to his own land, which both Johnson and Gibbs were seeking to purchase.[999]

In 1856 Hirini Tipene had informed the governor of the discovery of gold at Whangarei, at the same time complaining that settlers were stealing this from his lands.[1000] Johnson, though, believed that another piece of land, evidently also close to Gibb's property (and possibly included in the Whauwhau block), was 'more coveted by intending settlers for a farm than perhaps any other piece of Land in the District and would readily sell at 30/- or 40/- per acre'. He recommended paying four shillings per acre for this land – incidentally indicating that he considered a resale mark-up in the vicinity of 750-1000% to be a fair one – but just two shillings per acre for the 600 acres adjoining Gibb's estate.[1001] In the event the Whauwhau block was acquired for just under one and half shillings per acre, whilst Te Kamo (perhaps the more likely location of the desirable farm land Johnson had referred to) for just over three shillings and four pence per acre. The 1646-acre Te Mahe block, the purchase for which was completed on the same day as Whauwhau and Te Kamo for the sum of £100,[1002] was the cheapest of the three transactions on a per acre basis, though Johnson's report indicated that it was again good agricultural land with frontage on to the harbour.[1003]

As the final successful acts of Johnson's tenure as District Commissioner at Whangarei, the three small purchases close to the Whangarei township had been

[999] Johnson to McLean, 16 November 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3081-3085].

[1000] Hirini Tipene to Governor, 29 April 1856, IA 1/1856/1769, Arch-NZ, [docs, vol.3, pp.866-870].

[1001] Johnson to McLean, 16 November 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3081-3085].

[1002] AUC 286, LINZ, [docs, vol.22, pp.7355-7356]; Turton's Deed No.116, Province of Auckland, pp.154-155, in Berghan Supporting Papers, vol.6, pp.3570-3571.

[1003] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.84, [docs, vol.12, p.3901].

valuable, if modest, acquisitions on behalf of the Crown. In August 1858, shortly before an ailing Johnson left the employment of the Land Purchase Department, he wrote to McLean:

> In reply to your query when the district will be finished, I suppose you mean quite bought up, that will not be for many years; seventy thousand acres of the best of the lands still remains in the hands of the Natives – there is still about 30,000 acres offered for sale unsurveyed – very poor stuff – and I do not think that it is desirable for a Commissioner to remain on account of it at this place as [?] no land has been offered lately.[1004]

With no District Commissioner based permanently in the district after 1858, and opposition to further sales increasing as a consequence (among other reasons) of the tribal tensions these exacerbated, no further transactions were completed in the Whangarei district prior to late 1861. In September of that year John Rogan, the Kaipara District Commissioner reported on five blocks within the Whangarei district then under negotiation. The adjoining blocks of Ruatangata and Mirowhakatiki, both of which were purchased by the Crown on 2 November 1861, were among these. Rogan described the 5450-acre Ruatangata block as containing a small portion of good volcanic land, with the remainder being of inferior quality, about half of it being covered in 'forest of general description'. The other portion of the block was 'almost barren', with poor soils and fern covering. The block was 'for the most part extremely damp during the greater part of the year', and situated about four miles to the north-west of Mair's claim. It was accessible by a good level track through the forest, passing through the Māori settlement of Ketenikau.[1005] Mirowhakatiki was marginally larger, at 5500 acres, about half of which was 'of good quality, principally volcanic, covered with forest' and the other half containing inferior soils, some of the block

[1004] Johnson to McLean, 24 August 1858, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3111-3112].

[1005] Rogan, Lands Surveyed and under Negotiation for Purchase from the Natives, 14 September 1861, *Epitome*, C, p.109.

being swampy. Rogan recommended that a uniform price of one shilling per acre for both blocks would be ample.[1006]

Rogan convened a meeting of the claimants to these blocks at Whangarei on 15 October 1861 to discuss the proposed transactions. Asked to name the price per acre for the two blocks, Rogan had informed the meeting that he was prepared to pay one shilling per acre for each of the blocks, but the 'claimants after [sic] stood up one by one, and said that their price was 3s'.[1007] It was subsequently agreed to refer the matter back to the government in Auckland to decide. Rogan reported that:

> The principal objection to these purchases is their being detached from Crown lands, and the only available line of road thereto, leads from Kete Nikau through a block of Native Land for about eight miles. In negotiating for this land in the first instance, I stipulated for a line of road. The Natives are now prepared to give the road, conditionally however, that a payment be made for the right of way. As there are a number of Nova Scotians who are desirous of settling on the available parts of these blocks, I submit that the sum of £600 be forwarded to me, which will be a little over the amount I have already offered, as I have every reason to believe that this amount will complete the purchase of Ruatangata and Mirowhakatiki, including the right of road.[1008]

Clearly Rogan's agreement that the price for the two blocks should be referred back to the government for decision was little more than a ploy. It was not as if Crown officials in Auckland were disinterested arbitrators, but the owners of the two blocks in question, having no other official charged with protecting their interests to whom they could turn for advice or assistance, were left with limited options in situations such as these.

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[1006] Rogan, Lands Surveyed and under Negotiation for Purchase from the Natives, 14 September 1861, *Epitome*, C, p.109.

[1007] Rogan to Chief Commissioner, 16 October 1862 [sic – 1861], AJHR, 1862, C-1, p.377, [docs, vol.24, p.8160].

[1008] Rogan to Chief Commissioner, 16 October 1862 [sic – 1861], AJHR, 1862, C-1, p.377, [docs, vol.24, p.8160].

Rogan forwarded the signed deeds of conveyance for both blocks back to Auckland on 5 November 1861. He reported that he had, after a considerable time, eventually succeeded in persuading the owners to accept £300 for each block, equating to a little over 13 pence per acre.[1009] A right of road was also reserved to the Crown in the Mirowhakatiki deed covering the eight miles of adjacent Māori land for which Rogan had requested a right of way (for which the sum of £25 was deducted equally from the amount paid for both blocks and handed over to the owners of the land through which the road was to run). Hori Kingi Tahua and three other chiefs of 'Ngatimanu and Ngatihau' signed the deed for Ruatangata,[1010] while the deed for Mirowhakatiki was signed by 11 members of 'Ngatikahu'.[1011]

Four further deeds were signed in respect of Whangarei lands on 20 January 1862, of which only one had been referred to in Rogan's September 1861 report as being under negotiation at that time. Rogan had again recommended that one shilling per acre should be paid in respect of the Hikurangi block, containing 12,000 acres of land of 'fair average quality', nearly two-thirds of which was hilly and covered with forest, including some kauri and kahikatea, and the remaining one-third being open fern land and swamp. The Hikurangi block adjoined the Kaurihohore block on the north side and was about eight miles distant from the settlement at Whangarei.[1012] Its sale had also been discussed at the October 1861 hui, where the owners had sought double the one shilling per acre sum Rogan had offered them. A 'very angry discussion...between the Whangarei Natives and Haki Whangawhanga and his party from Ngunguru, who disputed the boundary line cut by the Surveyor, in a determined manner, for several hours' had, however, seen the Hikurangi transaction delayed. Rogan reported that although Haki had eventually withdrawn his opposition, some of his young men remained obstinate throughout and had 'left the meeting in an excited state, protesting against the disposal of the disputed boundary', as a consequence of which he deemed

[1009] Rogan to Chief Commissioner, 5 November 1861, AJHR, 1862, C-1, p.378, [docs, vol.24, p.8161].

[1010] AUC 288, LINZ, [docs, vol.22, pp.7359-7360]; Turton's Deed No.118, Province of Auckland, pp.157-158, in Berghan Supporting Papers, vol.6, pp.3573-3574.

[1011] AUC 289, LINZ, [docs, vol.22, pp.7361-7363]; Turton's Deed No.119, Province of Auckland, pp.158-159, in Berghan Supporting Papers, vol.6, pp.3574-3575.

[1012] Rogan, Lands Surveyed and under Negotiation for Purchase from the Natives, 14 September 1861, *Epitome*, C, p.109.

it advisable to postpone the deed signing until their objections had been decided.[1013] Their objections were eventually overcome by agreement that two of the Ngunguru chiefs should receive £10 each out of the total payment of £600,[1014] £580 of which was duly paid to the 'Ngatikahu and Ngatihau' signatories to the deed at the time of its signing on 20 January 1862, with the remaining £20 handed over to the two chiefs five days later.[1015] Just as with the other two blocks, Rogan had got his way again, since the sum equated to the one shilling per acre he had initially offered the owners.

The Owhiua block, located on the northern side of Whangarei harbour adjacent to the Tamaterau block, contained 847-acres, including water frontage, for which the much higher price per acre of nearly six shillings (or £250 in total) was paid to members of 'Ngatikahu' tribe.[1016] The Apotu block, adjoining Hikurangi and Kaurihohore, was partly covered in rich fern land and swamp. Rogan had reported it as being under negotiation in December 1861, at which time he had requested authority to pay between two and three shillings per acre for the block.[1017] In the event he paid just over two shillings per acre (£100 in total), again to Ngāti Kahu for this 947-acre block.[1018] Te Tupua, a small block of 100 acres adjoining Kaurihohore, was evidently required for roading purposes.[1019] It was purchased for the sum of £20.[1020]

Rogan observed in forwarding the deeds for these four blocks to the Land Purchase Department that it was 'hardly necessary...to remark on the importance that these

[1013] Rogan to Chief Commissioner, 16 October 1862 [sic – 1861], AJHR, 1862, C-1, p.378, [docs, vol.24, p.8161].

[1014] Rogan to Chief Commissioner, 29 January 1862, AJHR, 1862, C-1, pp.379-380, [docs, vol.24, pp.8162-8163].

[1015] AUC 290, LINZ, [docs, vol.22, pp.7364-7365]; Turton's Deed No.120, Province of Auckland, pp.160-161, in Berghan Supporting Papers, vol.6, pp.3576-3577.

[1016] AUC 291, LINZ, [docs, vol.22, pp.7366-7367]; Turton's Deed No.121, Province of Auckland, pp.162-163, in Berghan Supporting Papers, vol.6, pp.3578-3579.

[1017] Rogan, memorandum, 18 December 1861, AJHR, 1862, C-1, p.377, [docs, vol.24, p.8160].

[1018] AUC 307, LINZ, [docs, vol.22, pp.7408-7412]; Turton's Deed No. 122, Province of Auckland, pp.163-164, in Berghan Supporting Papers, vol.6, pp.3579-3580.

[1019] Rogan, memorandum, 18 December 1861, AJHR, 1862, C-1, p.377, [docs, vol.24, p.8160].

[1020] AUC 319, LINZ, [docs, vol.22, pp.7482-7483]; Turton's Deed No.123, Province of Auckland, p.164, in Berghan Supporting Papers, vol.6, p.3580.

purchases are likely to be of to the District of Whangarei, not only because the land is situated in a good position, but because these purchases will lead to others in the course of some time, which contain land of the first quality in the Province of Auckland'.[1021] Privately he boasted to McLean nearly a year later that he had 'just come from the land office where some of my late Whangarei purchases have been offered for sale and great competition took place[,] the price I dare say averaged 15/- an acre. What do you think of that. I gave 1/- 12 mos. ago'.[1022] Johnson's projected mark-up of 1000% had been increased to an actual one of 1500% under Rogan's brief tenure in charge of Whangarei purchase operations. Even the mighty McLean must have been impressed.

Two notable features of Rogan's purchases at Whangarei (besides the lack of reserves in any of the blocks acquired) stand out: firstly Tirarau's complete absence from proceedings – he had not signed any of the deeds – and, secondly, the generally low prices paid for the various blocks purchased. Both of these would change with Rogan's final purchase at Whangarei, that of the 140-acre Onerahi block, purchased from Tirarau alone on 9 February 1863 for the remarkable sum of £500, or about £3 1s and fivepence per acre. Rogan reported the day after completing the four deeds signed on 20 January 1862 that he had visited Tirarau that morning to discuss various matters, at which time the chief had informed him that:

> the stern and middle of the vessel had been disposed of and that he now offered the bow. Meaning that he has formally offered the point of land opposite Matakohe Island in the Whangarei Harbour, known as Tirarau's Point for sale to the Government. This land has been held by Tirarau for many years notwithstanding the attempts of all the officers of the Land Purchase Dept. to buy it as it is considered by the majority of those who are acquainted with the locality to be the best position in Whangarei for a Township having deep water frontage where large vessels may anchor within a short distance of the shore in safety.[1023]

[1021] Rogan to Chief Commissioner, 29 January 1862, AJHR, 1862, C-1, p.379, [docs, vol.24, p.8162].

[1022] Rogan to McLean, 7 January 1863, McLean Papers, folder 541, ATL, [docs, vol.10, p.3249].

[1023] Rogan to Native Minister, 21 January 1862, IA 1/1865/1335, Arch-NZ, [docs, vol.3, pp.961-962].

Te Tirarau had evidently appointed a local settler, Henry Walton (who was married to a niece of the chief), as his agent for negotiating the transaction. Walton informed Rogan that the chief expected £500 for the land, plus the right to select up to 20 quarter-acre sections in the new township once it was laid out, and that he had succeeded in inducing Tirarau to part with the land at the express request of the Auckland Superintendent. Rogan received the required money a few weeks later and Tirarau signed the deed on 9 February 1863.[1024] Just as was the case with the earlier purchase of another piece of prime waterfront land at Whangarei, the nearby Kaiwa block, Tirarau was the sole signatory to this latest transaction. Unlike Kaiwa, the extent to which other parties also claimed customary interests in the Onerahi block is unclear, although Crown officials evidently operated throughout on the assumption that the land was owned by Tirarau alone. Although the District Commissioner had described the allocation of the 20 quarter-acre allotments to Tirarau as a 'condition' of the purchase when forwarding the deed of sale to the Native Minister,[1025] the deed itself made no reference to this as a term of the agreement. Crown grants were, however, prepared in the name of Tirarau by 1865.[1026]

William Searancke, who completed the remaining Crown purchases at Whangarei from 1863 through until the abolition of the Land Purchase Department in 1865, had previously been a District Commissioner in the lower North Island, where, according to one historian, he 'became notorious for making secret deals and breaking promises'.[1027] Perhaps he had learned to cover his tracks better by the time he reached Whangarei, because there is precious little documentary evidence available as to most of the 14 purchases he completed there between 1863 and 1865.

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[1024] AUC 292, LINZ, [docs, vol.22, pp.7368-7369]; Turton's Deed No.124, Province of Auckland, pp.164-165, in Berghan Supporting Papers, vol.6, pp.3580-3581.

[1025] Rogan to Native Minister, 10 February 1863, IA 1/1865/1335, Arch-NZ, [docs, vol.3, p.959].

[1026] Robert Graham to Colonial Secretary, 18 May 1865, IA 1/1865/1335, Arch-NZ, [docs, vol.3, p.957].

[1027] Sally MacLean, 'Searancke, William Nicholas 1817?-1904', DNZB, vol.2, p.446.

Just two small transactions were completed between the Onerahi purchase in February 1863 and April 1864. The first of these, the Maruarua block was some 800 acre acres in extent and bounded on one side by the Mirowhakatiki block. Searancke purchased the block from four members of Ngāti Kahu on 8 August 1863 for the sum of £120, or exactly three shillings per acre.[1028] Mimiwhangata, a 460-acre coastal headland to the south of Whangaruru, was purchased from 'the Tribe Ngatiwai' on 1 September 1863 for the sum of £57 10s.[1029]

Ohuatahi, situated around the mouth of the Pataua River, was purchased on 29 April 1864.[1030] The block, surveyed at 1560 acres, was the subject of a derivative old land claim by George Thorne, who had purchased the claim from the estate of James Stuart in Sydney for the sum of £20 in 1848.[1031] In November 1862 Searancke informed the Land Claims Commissioner, F.D. Bell, that 'considerable objection is made by the Natives now occupying and claiming that District' on the basis that they had not received a share of the payment for the land supposedly purchased by Stuart more than two decades earlier and that the boundaries described in the deed were incorrect.[1032] Searancke added, however, that the owners were willing to cede an area of about 2000 acres provided their claim was now recognised by the government. Although they had requested £250 for the land, Searancke believed he could extinguish their claims for £100 or £120 at the most. He added that:

> The Land is of good quality on the north bank of the Pataua River & is easy of access. I do not think that the Natives will give up this land without a payment and as their claim is an equitable one, I beg to recommend that they should be

[1028] AUC 301, LINZ, [docs, vol.22, pp.7382-7385]; Turton's Deed No.125, Province of Auckland, pp.165-167, in Berghan Supporting Papers, vol.6, pp.3581-3583.

[1029] AUC 300, LINZ, [docs, vol.22, pp.7380-7381]; Turton's Deed No.126, Province of Auckland, pp.167-168, in Berghan Supporting Papers, vol.6, pp.3583-3584.

[1030] Turton's Deed No.127, Province of Auckland, pp.168-169, in Berghan Supporting Papers, vol.6, pp.3584-3585.

[1031] F.D. Bell (Land Claims Commissioner), memorandum, 31 March 1864, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5139.

[1032] Searancke to Bell, 8 November 1862, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, pp.5122-5123.

> paid the sum they are willing to receive in order that this case may be finally settled.[1033]

Thorne's Sydney-based lawyers evidently refused to pay the sum requested by the claimants to the block,[1034] but by January 1864 Searancke had completed the survey and requested the sum of £120 to enable him to pay the outstanding claims on the land, which he described as 'of a superior quality with a considerable number of fine Kauri Trees sprinkled over it' and 'a very valuable property and superior generally in quality to any land in its neighbourhood'.[1035] Bell noted the following month that Thorne had remitted the £120 required to pay the claimants, along with a further £150 for the cost of survey, and directed that a Crown grant for the 1560-acre block be prepared in his name, despite the fact that Searancke had yet to pay the money to local Māori. He had, Bell added, despatched Searancke to the locality 'and after some delay and trouble the Native claims were all disposed of for the sum of £120'.[1036] The deed signing and payment of the sum required did not take place for a further month.

The 8580-acre Waikare block, located to the south of the Pataua River, was purchased by Searancke on 1 July 1864.[1037] It and the nearby Whanui block, of 9269 acres, purchased the following day had long been targeted by Crown purchase agents.[1038] Johnson, in fact, had first forwarded a survey of the Waikare block to McLean in May 1858, at which time he had been requested to 'complete the purchase of the block at

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[1033] Searancke to Bell, 8 November 1862, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5123.

[1034] Allan, Street and Norton to C. McIntosh, 15 December 1862, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5130.

[1035] Searancke to Bell, 8 January 1864, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5137.

[1036] F.D. Bell (Land Claims Commissioner), memorandum, 31 March 1864, OLC 448-450, Arch-NZ, in Berghan 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.9, p.5139.

[1037] AUC 295, LINZ, [docs, vol.22, pp.7372-7373]; Turton's Deed No.128, Province of Auckland, pp.169-171, in Berghan Supporting Papers, vol.6, pp.3585-3587. Searancke also completed the purchase of the small Hokopua block, acquired from 'the Chiefs and People of the Tribe Waiariki' for £15 on the same date. AUC 298, LINZ; Turton's Deed No.130, Province of Auckland, p.173.

[1038] AUC 293, LINZ, [docs, vol.22, pp.7370-7371]; Turton's Deed No.129, Province of Auckland, pp.171-173, in Berghan Supporting Papers, vol.6, pp.3587-3589.

the price named by you, viz., not exceeding ten pence per acre, as it is very important that the Native Title should be extinguished over the said block, it being much required for expected immigrants from Nova Scotia'.[1039] The strategic significance of acquiring the Waikare block was obvious enough by reference to its location. On its south-western corner the block was bounded on one side by the Crown's appalling Kaiwa purchase and on another by the Manaia block. The acquisition of Waikare, which extended north to Taiharuru Bay, would ensure that a substantial (and contiguous) chunk of the very valuable lands on the North Head of Whangarei Harbour would be in Crown hands. It would appear to have been Andrew Sinclair, the government surveyor based at Whangarei, who had been instrumental in devising this strategy. In February 1858 he informed McLean privately that:

> Mr. Johnson has been to town lately and during his absence I obtained the consent of the natives to give up about 9,000 acres in addition to what was formerly offered for sale, my object was to connect the Manaia[,] Pataua, Tamaterau, Parahaki and Whareora blocks which has now been done, so that from seven miles West of Mair's grant to the Whangarei Heads, the land on the North side of the harbour will be in the hands of the Government.[1040]

Sinclair also reported in the same letter that he had surveyed the Taiharuru and Pataua rivers on both sides, each being about seven miles long, and the Waiparera Creek on one side, and had carefully noted the natural features of the area.

Yet despite the Crown's evident anxiety to acquire the Waikare and Wainui blocks, in June 1861 Rogan reported that the negotiation in respect of both pieces of land was 'still pending, as the Natives have repeatedly refused the price offered by the Government for the purchase of these two blocks'.[1041] A draft deed for the Whanui block dating from 1858 indicated that the government was prepared to pay just over

[1039] McLean to Johnson, 31 May 1858, AJHR, 1861, C-1, p.87, [docs, vol.12, p.3902].

[1040] Andrew Sinclair to McLean, 13 February 1858, McLean Papers, folder 575, ATL, [docs, vol.10, pp.3296-3297].

[1041] Rogan to Chief Commissioner, 5 June 1861, AJHR, 1861, C-1, p.102, [docs, vol.12, p.3908].

£308 for the land. But this was never signed.[1042] In May 1863 Searancke informed the Native Minister, F.D. Bell, that, at the request of Wiremu Pohe and Horomona:

> I accompanied them on Thursday last to Taiharuru on the coast to see Hoani Papita and the natives of the Waiariki Tribe to ascertain if any decision had been arrived at by them respecting the sale of the Whanui and Waikare Blocks of land to the Govt.
>
> These lands were surveyed by Mr. Sinclair in 1857-8 and the reserves also pointed out and surveyed. Mr. DC [District Commissioner] Johnson & subsequently Mr. Rogan negotiated for their purchase but I believe with no result.
>
> It now appears that these lands are owned by two distinct tribes of one Hoani Papita is the recognised chief, of the other Horomona is the principal man: Hoani Papita declares his inability from disputed claims to sell the portion owned by himself and tribe but makes no objection to Horomona having his portion surveyed off and selling it, or as he said Horomona can do what he likes with his portion of the land.[1043]

Horomona now sought to have his portion of the lands surveyed, though Searancke reported that 'the bush lands appear to be of a generally very broken character and the open land very poor the only desirable spots being reserved by the natives for themselves'.

Despite this, in December 1863 Searancke further reported that both Hoani Papita and Horomona were now anxious to see both blocks transacted. He noted that the lands had been surveyed in 1857 at which time the offer of £600 or about seven pence per acre for the two blocks had been 'considered by the natives as too small'. The owners continued to reject this amount, Searancke added, and he now submitted that 'considering the extent of the Block and the gradual advance in value of land in this

[1042] AUC 700, LINZ.

[1043] Searancke to F.D. Bell, 11 May 1863, in AUC 700, LINZ.

District I may be authorised to treat with the natives for the purchase of this block for a sum not to exceed £1200'.[1044]

In May 1864 Searancke formally requested permission to purchase the Whanui and Waikare blocks (which he referred to as the Taiharuru block) and asked that blank deed forms with reduced copies of the plans prepared by Sinclair in respect of both blocks should be sent him if approval was given. Searancke also reported that he was 'now proceeding to make the necessary subdivision in the land, to regulate the payment to the different claimants, as I am anxious not to keep the Natives idling about waiting for their money longer than is necessary'.[1045] On the same date Searancke wrote to the Colonial Secretary, William Fox, that:

> In accordance with your letter of the 15th January last, authorizing me to negotiate the purchase of the Whanui and Taiharuru Blocks for any sum not exceeding Two thousand pounds, I have now the honour to inform you that I succeeded last week in assembling the whole of the Natives interested in those blocks of land. After a short discussion, which, if prolonged, I saw would only lead to further complications and total failure in my object, I made them a distinct offer of Two shillings per acre (£1,800) for the total acreage of the two blocks, viz., 17,849 acres. My offer was unanimously agreed to by the whole of the Natives present. On account of a disputed boundary, which, trifling in itself, I feared might lead to trouble, I subsequently promised a further payment of Fifty pounds, making a total amount of £1,850.[1046]

Searancke's report to the Colonial Secretary hints at significant discontent expressed by Māori assembled at the hui to discuss the sale of the two blocks, of a serious enough nature to jeopardise the acquisition of the land the Crown had been

[1044] Searancke to Colonial Secretary, 31 December 1863, in AUC 700, LINZ. The £1200 figure would appear to be a typographical error judging by the government's subsequent authorisation to negotiate for the blocks for any sum not exceeding £2000. The letters attached to AUC 700 appear to be copies of the originals made sometime during the 1870s.

[1045] Searancke to E. Shortland (Native Secretary), 2 May 1864, *Epitome*, C, p.88.

[1046] Searancke to Fox, 2 May 1864, *Epitome*, C, p.88.

endeavouring to acquire since at least 1858. His failure to disclose the nature of the discontent only adds to the intrigue.

In compiling a list of purchases completed at Whangarei to the end of 1864, Searancke claimed that the Crown's purchase of the Whanui block was 'undisputed by the Natives', but admitted one outstanding grievance with respect to Waikare. He noted that:

> when purchased, I considered it to be one of the fairest and most indisputable sales; but on the return of Hirini Tipene from England, some months after the sale was completed, he set up a claim to a portion named Tikitikitohe. His claim I never heard of before, nor did his father, whom I asked to accompany me when I paid the money, set up any claim on behalf of his son. I have been trying to make the Natives, who received the money, settle with Hirini, but in vain. His claim, consequently, still exists. He had, I believe, written to the Government on the subject.[1047]

It is unclear as to whether the claim of Hirini Tipene to a portion of the block was ever satisfactorily settled.

On the same date as the Whanui deed was signed, Searancke also paid £15 for a 140-acre portion of Busby's claim on the Waiotoi River.[1048] The Whananake block also encompassed an old land claim. David Salmon claimed to have purchased the land in 1834 from the chief Waikato, but other Kawakawa Māori claimed that he had 'only alienated his own right' to the land.[1049] Johnson recorded the block as having been under negotiation in 1858, noting at the same time that:

> as its sale was always opposed by the Kawakawa Natives, so that possession could not be obtained of it, the Crown granted other land to the representatives

[1047] Searancke to Native Minister, 27 December 1864, *Epitome*, C, p.91.

[1048] Turton's Deed No.130, Province of Auckland, pp.173-174, in Berghan Supporting Papers, vol.6, pp.3589-3590; Searancke to Native Minister, 27 December 1864, *Epitome*, C, p.91.

[1049] Nugent to Colonial Secretary, December 1854, MA 4/1, Arch-NZ, [docs, vol.4, p.1254].

> of the late Capt. Salmon, in exchange for the said claim, on Capt. Salmon's representatives undertaking to satisfy the rest of the claimants. They have consented to give up their claim for £100, which was to be made after a survey of the land has been made.[1050]

Although Johnson had reported the block as being 2560 acres in extent, Searancke later listed the area purchased on 14 July 1864 as being 1145 acres.[1051] Tipene Hari, on behalf of 'Ngatikahu and Ngatiwai', was the sole signatory to the deed signed on 14 July 1864, though Hori Wehiwehi was the only one to sign when the second half of the £100 purchase money was paid some months later, in November 1864.[1052]

The Waimate Civil Commissioner, George Clarke Snr., meanwhile 'wonder[ed] how it ever passed the Land Commission Court and still more that the Natives of that place ever permitted the Land to be surveyed'. Even so, he considered that it would 'never do to disturb Titles or call in[to] question what has been done by a former Government', especially when the claim 'may arise from an encroaching and covetous disposition of the Natives'. But remarkably, although the plan of the purchase showed a pā, there was no reference to any reserves in the text of the 1864 Whananake deed, even though Clarke had observed that the residents of the land were 'much attached to the Soil'.[1053]

Searancke completed two small transactions in September and October 1864 for roading and landing-place purposes,[1054] and in November 1864 completed the purchase of nine small islands situated around the North Head of Whangarei Harbour

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[1050] Johnson to McLean, 11 February 1858, AJHR, 1861, C-1, p.84, [docs, vol.12, p.3901].

[1051] Searancke to Native Minister, 27 December 1864, *Epitome*, C, p.91.

[1052] AUC 282, LINZ, [docs, vol.22, pp.7349-7350]; Turton's Deed No.131, Province of Auckland, pp.174-175, in Berghan Supporting Papers, vol.6, pp.3590-3591.

[1053] Clarke to R.C. Barstow, 24 October 1864, Arch-NZ (Akl), BAVX 4817/24d, [docs, vol.23, pp.7652-7653].

[1054] Turton's Deed No.132, Province of Auckland, pp.175-176; Turton's Deed, No.133, Province of Auckland, p.176, in Berghan Supporting Papers, vol.6, pp.3591-3592.

for the sum of £20.[1055] The 4500-acre Matapouri block, purchased by Searancke on 22 November 1864 for the sum of £120,[1056] encompassed an area subject to one of Gilbert Mair's old land claims, for which scrip had been issued to the derivative claimants, Christie and Duffies.[1057] Searancke reported in September 1864 that he had 'at length succeeded in coming to an arrangement with the Natives' concerning this block. The chief difficulty in resolving the settlement of the claim on the block was, he reported, 'the opposition made by the Tutukaka Natives to the south boundary, which they have now withdrawn, on my promising them a small compensation in money'. The survey of the block had been completed with the exception of the southern boundary, and Searancke reported that the sum agreed in full compensation for outstanding Māori claims on the block was £120.[1058]

In December 1864 Searancke reported that he had completed the survey of the Mongari block, which he estimated at 2800 acres, about two-thirds of which were 'poor, hilly, open, clay land; and one-third, on the banks of the Mangari and Waipiu Rivers, of good quality'. He reported that a sum of £330 would be required to purchase the block. The asking price was, he added, 'at the rate of 2s. 4d. an acre, a price I consider low when the daily increasing competition from private purchasers is taken into consideration'.[1059] Searancke considered a significant advantage of the transaction would be that it was adjacent to the government-owned Ruatangata block and its acquisition would 'give a defined river boundary, in place of the present undefined line across country'.[1060] The deed for the block was signed by Hori Kingi Tahua and others on 21 January 1865.[1061] Searancke reported on 7 February 1865 that

[1055] AUC 299, LINZ, [docs, vol.22, pp.7378-7379]; Turton's Deed No.134, Province of Auckland, pp.176-177, in Berghan Supporting Papers, vol.6, pp.3592-3593.

[1056] AUC 297, LINZ, [docs, vol.22, pp.7376-7377]; Turton's Deed No.135, Province of Auckland, pp.178-179, in Berghan Supporting Papers, vol.6, pp.3594-3595.

[1057] Paula Berghan, 'Northland Block Research Narratives, Vol.II: Old Land Claims', February 2006, pp.65-66.

[1058] Searancke to Colonial Secretary, 20 September 1864, *Epitome*, C, p.90.

[1059] Turton recorded the surveyed acreage of the block at 4470 acres, which would take the price per acre even lower, to just over one shilling and five pence.

[1060] Searancke to Colonial Secretary, 14 December 1864, *Epitome*, C, p.91.

[1061] AUC 296, LINZ, [docs, vol.22, pp.7374-7375]; Turton's Deed No.136, Province of Auckland, pp.179-180, in Berghan Supporting Papers, vol.6, pp.179-180.

he had 'by instructions from the Chief Judge New Zealand Land Court...proceeded to Whangarei, and on the 21st ultimo made and completed the purchase of the Mangari Block of land from the aboriginal owners for the sum of £330'.[1062] What exactly the newly-appointed Chief Judge of the Native Land Court, F.D. Fenton, was doing issuing instructions in relation to the Crown's purchase of a block of land at Whangarei is not at all obvious, though Searancke's report evidently came as no surprise to the Native Department.[1063]

Fittingly, perhaps, considering how little documentation has survived for many of the purchases, the final Crown transaction at Whangarei before the formal abolition of the Native Land Purchase Department later in 1865 is something of a mystery. The 5415-acre Otakairangi block was purchased by Searancke on 24 May 1865 for the sum of £500.[1064] Given that it was bounded on one side by the Wairua River, this could be the same land as that which Searancke referred to as the Wairua block in December 1864, when he noted that the block had been surveyed but not yet mapped.[1065] At the time he estimated the block as being 3500 acres in extent. Little more information exists as to this transaction.

Despite gaps in the Crown records, we can be reasonably certain that more land was alienated at Whangarei by means of Crown purchasing than in any other district considered in this report. Over the space of just 11 years between 1854 and 1865 nearly all of the premium land around Whangarei Harbour, and a large chunk of the adjacent lands suitable for pastoral or agricultural purposes, had been acquired by the Crown, often at minimal prices and by means that were often questionable, and – in one or two particularly egregious instances – simply scandalous. Throughout this period Crown agents demonstrated little concern to ensure Whangarei Māori retained a sufficient quantity of good lands for their own present and future needs. Reserves

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[1062] Searancke to Native Minister, 7 February 1865, *Epitome*, C, p.92.

[1063] H. Halse (Acting Native Secretary) to Searancke, 13 February 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1605].

[1064] Turton's Deed No.137, Province of Auckland, pp.181-182, in Berghan Supporting Papers, vol.6, pp.3597-3598.

[1065] Searancke to Native Minister, 27 December 1864, *Epitome*, C, p.92.

were rare and Māori efforts to retain lands deemed suitable for settler occupation were consistently resisted. Throughout this process the protection of Whangarei Māori interests was not so much deficient, as entirely absent from proceedings.

### 5.6 Bay of Islands

A comprehensive programme of Crown purchasing in the Bay of Islands district commenced in June 1855 with the appointment of Henry Tacy Kemp as District Commissioner. Kemp, the son of CMS missionary James Kemp, had been born in Kerikeri in 1821 and entered government service on 6 February 1840, when his appointment as an interpreter was gazetted.[1066] After serving as a Protector of Aborigines between 1842 and 1846, Kemp was the following year appointed Native Secretary. In this capacity he achieved the remarkable feat in 1848 of purchasing nearly one-third of New Zealand (the 20,000,000-acre Kemp block) without actually setting foot on the land in question at any time prior to concluding the transaction and contrary to his instructions that ample reserves for Ngāi Tahu should be carefully marked on the ground.[1067] Yet despite his manifest dereliction of duties, Kemp was attached to the Native Land Purchase Department from the time of its formal establishment in 1854, through to its abolition in 1865, and was a central figure in Crown purchasing in the north throughout this period.

Given his connections with the north, Kemp was perhaps an obvious appointment as District Commissioner for the area, although McLean can surely not have been unaware of the fallout consequent upon his bungled South Island negotiations, whilst Kemp's supposed competency in te reo Māori has more recently been called into question.[1068] One might have thought, considering Kemp's previous track record

[1066] Mark Houlahan, 'The Canon on the Beach: H.T. Kemp Translating *Robinson Crusoe* and *The Pilgrim's Progress*', in Alex Calder, Jonathan Lamb and Bridget Orr (eds), *Voyages and Beaches: Pacific Encounters, 1769-1840*, Honolulu: University of Hawai'i Press, 1999, pp.306-307.

[1067] Waitangi Tribunal, *Ngai Tahu Report*, p.469.

[1068] Margaret Mutu, '*Tuku Whenua* and Land Sale in New Zealand in the Nineteenth Century', in Calder, Lamb and Orrs (eds), *Voyages and Beaches*, pp.317-328.

when it came to purchasing Māori lands, that McLean would take care to issue detailed instructions to him and at the same time put in place mechanisms to ensure their strict adherence. Instead, in June 1855, McLean simply instructed Kemp that he was to:

> avail yourself of the earliest opportunity to proceed to the Bay of Islands, in order that you may make arrangements for the purchase of land from the Native Tribes in that district. From your practical knowledge of the Bay of Islands and its inhabitants, European and Native, you are peculiarly qualified for undertaking this service; I shall, therefore, trust to your own prudence and discretion in making such arrangements as you may deem advisable for carrying out an object of such importance; and, in order that you should not be delayed for want of funds, a sum of Seven hundred pounds (£700) is placed at your disposal for this purpose.[1069]

These remarkably brief instructions were more notable for what was left unstated that what was actually said. McLean failed to provide Kemp with any instructions relative to the approach he should take to ensuring all owners of a block were party to the proposed transactions, and made no reference at all to reserves for ongoing Māori use and occupation, the prices that should be paid for the lands, whether blocks should be surveyed prior to their purchase, or the documentation Kemp should provide to support each purchase. Indeed, by the end of Kemp's time as District Commissioner in the Bay of Islands in the mid-1860s even his superiors in Wellington would have cause to deprecate the 'very unsatisfactory manner' in which various purchases had been conducted.[1070]

Kemp was responsible for all but one Crown purchase at the Bay of Islands in the period to 1865. James Clendon, the Bay of Islands Resident Magistrate, had been responsible for the very first deed of conveyance executed in 1852, setting a standard for deficient purchasing procedures by being both Crown purchase agent and sole

[1069] McLean to Kemp, 1 June 1855, AJHR, 1861, C-1, p.2, [docs, vol.12, p.3862]; see also Le 1/1856/200, Arch-NZ, [docs, vol.5, pp.1772-1773].

[1070] W. Rolleston (Native Secretary) to Kemp, 8 March 1866, MA 4/8, Arch-NZ, [docs, vol.5, p.1636].

witness to the deed which Kemp would continue during his decade-long tenure as District Commissioner in the region. In 1848 the chief Rewa indicated to the government that he was 'desirous of having a Schooner, and that if the Government will furnish him with one, he proposes to give to Government a piece of Land on the beach of Kororareka'.[1071] In an early indication of the complications that would attend Crown purchasing in the Bay of Islands, Cyprian Bridge, the Resident Magistrate, reported that the piece of land offered by Rewa probably included an area claimed by Walter Brodie by virtue of one of the many old land claims at Kororareka.[1072] In May 1850 the Surveyor General reported that the land now offered by Rewa consisted of two pieces, including a 135-acre block 'in the suburbs of Kororareka', embracing a wooded valley on the north side of Maiki Hill and 'one of the best sections in the town' of one rood and 32 perches close to the beach.[1073] Grey authorised the purchase for the sum of £120 upon execution of the deed of conveyance, and a receipt appears to have been signed by Rewa shortly after, in which he promised to sign a deed of conveyance 'when called upon to do so'.[1074]

Why the actual deed signing did not take place for a further two years is unclear from the sources and the deed contains no reference to the date upon which it was executed, giving only the year.[1075] However, an unsigned deed was forwarded to Clendon on 17 July 1852 and returned by him, signed solely by Rewa, to the Colonial Secretary on 30 July 1852.[1076] Turton evidently missed the fact that the deed covered two separate land blocks in compiling his published deeds, giving the impression that a section of less than half an acre had been acquired for the extraordinary sum of £120. In fact, the final surveyed acreage of the two blocks combined was just short of 133 acres.

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[1071] Bridge to Colonial Secretary, 28 March 1848, IA 1/1848/1029, Arch-NZ, [docs, vol.1, p.270].

[1072] Bridge to Colonial Secretary, 28 April 1848, IA 1/1848/1029, Arch-NZ, [docs, vol.1, p.272].

[1073] Ligar to Colonial Secretary, 22 May 1850, IA 1/1857/441, Arch-NZ, [docs, vol.3, pp.894-895].

[1074] Grey, minute, n.d. [c.May 1850], IA 1/1857/441, Arch-NZ, [docs, vol.3, p.895].

[1075] AUC 56, LINZ, [docs, vol.22, pp.7297-7303]; Turton's Deed No.26, Province of Auckland, pp.8-9, in Berghan Supporting Papers, vol.6, pp.3452-3453.

[1076] Colonial Secretary to Clendon, 17 July 1852, BAVX 4817/2a, Arch-NZ (Akl), [docs, vol.23, p.7978]; Clendon to Colonial Secretary, 30 July 1852, IA 1/1857/441, Arch-NZ, [docs, vol.3, p.893].

Kemp mistakenly believed that his purchase of the 1250-acre Pukehuia and Waitapu block (also known as Kaipatiki) on 2 August 1855 had been 'the first purchase made by the Government direct from the Natives' in the Bay of Islands district. He informed McLean officially a few days later that although the price paid for the block was 'perhaps, somewhat higher than is usually given by the Government...as a preliminary measure, and as an inducement for further and more extensive sales, the sum thus given will not, I think, be considered unreasonable'.[1077] The £100 payment made by Kemp equated to just over one shilling and seven pence per acre, though given that only a rough sketch of the block (which Kemp had estimated at anywhere between 1200 and 1800 acres) was enclosed with the deed he and the vendors could not have known with any accuracy at the time of signing the conveyance what the precise figure per acre actually was.[1078] Kemp noted that the land in question had been offered to the government by the Urikapana tribe some time previously and a promise made that the transaction should be concluded as soon as an officer was appointed for the purpose. He had, Kemp claimed, 'entered upon an early investigation of the ownership of this land', and had also allowed time for other outstanding claimants to appear (along with consulting Pene Taui and Waka Nene, who assured him that the proper claimants had been consulted) before concluding the deal. The land in question was situated on the shores of the Bay and was mostly hilly but abounding with timber suitable for ship or boat building, and accessible by water. What he failed to note in his report, but which is clear from the plan accompanying the deed, is that part of the block overlapped with one of the many CMS claims in the district.

Kemp's Purerua deed, signed on 25 August 1855, though purportedly a Crown purchase, had in fact been conducted on behalf of Thomas Hansen, the old land claimant to the block.[1079] A second deed signed on the same date covered the Te Wiroa and Parangiora block, adjoining Hansen's claim.[1080] In forwarding the deed of

[1077] Kemp to McLean, 5 August 1855, AJHR, 1861, C-1, p.3, [docs, vol.12, p.3862].

[1078] AUC 39, LINZ, [docs, vol.22, pp.7248-7256]; Turton's Deed No.27, Province of Auckland, pp.39-40, in Berghan Supporting Papers, vol.6, pp.3453-3454.

[1079] Daamen et.al., pp.139-141; AUC 40, LINZ, [docs, vol.22, pp.7257-7261]; Turton's Deed No.29, Province of Auckland, pp.42-43, in Berghan Supporting Papers, vol.6, pp.3456-3457.

[1080] AUC 12, LINZ, [docs, vol.22, pp.7207-7213]; Turton's Deed No.28, Province of Auckland, pp.40-42, in Berghan Supporting Papers, vol.6, pp.3454-3456.

conveyance to the Chief Commissioner, he noted that immediately after concluding the Purerua block purchase:

> the chiefs offered the adjoining block of land to the Government, known as Parangiora and Te Wiroa, which is, from its position and water-communication, likely to become very valuable. Aware that this block of land had been sought after by intending settlers, I was anxious to complete the purchase, which I did for the sum of Two hundred pounds sterling (£200). The extent of the block may be from One thousand to fifteen hundred acres (1,000 to 1,500 acres), a large portion of which is flat, and, taken as a whole, in every way available for cultivation.[1081]

Kemp added that he had no doubt the block would be taken up by settlers as soon as it was advertised for sale and the absence of any reserves for Māori would mean that it could be surveyed in a relatively short space of time. Given that Kemp had declared that he had been offered Te Wiroa upon concluding the Purerua transaction, and given that both deeds are dated the same day, it is clear that he had purchased Te Wiroa on the same day that it had been offered to him. He had previously informed McLean, in relation to the Pukehuia and Waitapu block, that he had allowed other claimants to the land ample time and opportunity to come forward. In the case of Te Wiroa he had clearly allowed them none, and his impulse purchase of the block doubtless explains the absence of any plan attached to the deed.

Kemp's primary focus, besides assisting old land claimants to secure titles to the areas they claimed, had, however, from the outset of his time in the north been firmly focused on the rich belt of land in the vicinity of Lake Omapere. In fact, it may well have been the opportunity arising from a dispute regarding fishing rights at the lake which had prompted Kemp's entry into the district in the first place. The dispute itself appears to have been first officially reported in September 1853, when the officer commanding the troops at Wahapu noted that 'Makoare is disputing with the Kaikohe Tribe about the right of Eel-fishing in the lake Omapere, which difference is likely to

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[1081] Kemp to McLean, 29 August 1855, *Epitome*, C, pp.20-21.

lead to a collision between the two tribes'.[1082] Some 18 months later, in April 1855, James Clendon reported that he had visited Makoare Taonui and 'Hena Puru'/'Hena Pura' (perhaps Hira Pure of Te Uriohua?) at Omapere regarding their 'long dispute...as to the right of eel fishing' and discovered that both 'were inclined to sell land, but hesitated in consequence of their being the...[illeg.] chiefs connected with Heke in the arrangement that not any land should be sold to the Government'. Clendon urged that:

> instructions should be given to take advantage of any inclination to sell on the part of Hena Puru, however small or valueless the block may be, it would break the league and most of the land round Omapere would immediately be offered to the Government.[1083]

Clendon was informed later that month that 'in accordance with your suggestion the necessary instructions have been issued to take advantage of any offer that may be made by the Natives of Omapere to dispose of their land in that locality to the Government'.[1084] Within less than two months of Clendon's report Kemp had been despatched to the Bay of Islands as the first District Commissioner to be based there. He lost little time in identifying the country adjacent to Omapere as a priority for acquisition. In August 1855 Kemp reported that he was in negotiation for the Omawake block, which he estimated as containing 7000 acres. This was open, undulating country, Kemp noted, with a small portion of excellent timber attached to it, but generally inferior soils:

> Its position, however, and proximity to the harbour of Russell, (being not more than twenty miles distant in a Westerly direction,) point it out as a tract of land which it is desirable should be as soon as possible in the hands of the Government. It is, moreover, unoccupied by the Natives, is the key to the rich

[1082] Captain Parratt to Major of Brigade, 13 September 1853, IA 1/1853/2236, Arch-NZ, [docs, vol.2, p.446].
[1083] Clendon to Colonial Secretary, 5 April 1855, James Clendon Letterbook, 1852-1855, NZMS 477, ACL. [Unable to be copied].

[1084] Sinclair (Colonial Secretary) to Resident Magistrate, Russell, 24 April 1855, BAVX 4817/4a, Arch-NZ (Akl), [docs, vol.23, pp.7906-7908].

> country skirting the lake Omapere, and would, if purchased, taken in conjunction with other blocks which have been, or may be hereafter, acquired, form an excellent site for an inland settlement.[1085]

One settler, in fact, informed an 1856 inquiry that between 20,000 and 30,000 acres of land had been offered the government near Taiamai (Ohaeawai) 'in consequence of the natives wishing to have a township'.[1086] The area around Lake Omapere was ideally suited for such a purpose, and although Kemp failed to record the nature of his negotiations with the owners of Omawake, it would be remarkable if the likelihood of a township being established in the area did not feature prominently as part of these discussions.

Kemp reported that he had offered £300 for the block after a personal inspection and investigation of its ownership, but the owners had declined this and instead requested £2000. He thought it 'unwise to press the matter' and recommended that 'negotiations may be suspended for a little time longer and with advantage to all parties'. If the chiefs still refused the sum an additional £100 might be offered them.[1087] Privately he informed McLean that 'the Natives hereabouts have some absurd notions as to price, but I am satisfied that time and patience will rectify their mistake'.[1088]

At the end of February 1856, Kemp reported that the owners of the Omawake block had indeed accepted the revised offer of £400, a deed for which had been signed on 26 February 1856.[1089] A wāhi tapu of particular significance to many Māori in the region had been excluded from the purchase and its position marked out on the ground and Kemp noted generally with respect to the block that:

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[1085] Kemp to McLean, 18 August 1855, AJHR, 1861, C-1, p.3, [docs, vol.12, p.3862].

[1086] Minutes of Evidence of the Board of Inquiry on Native Matters, 9 April 1856, GBPP, 1860 (2719), vol.10, p.270, [docs, vol.17, p.5846A].

[1087] Kemp to McLean, 18 August 1855, AJHR, 1861, C-1, p.3, [docs, vol.12, p.3862].

[1088] Kemp to McLean, 16 August 1855, McLean Papers, folder 368, ATL, [docs, vol.10, p.3119]. Emphasis in original.

[1089] AUC 42, LINZ, [docs, vol.22, pp.7262-7269]; Turton's Deed No.30, Province of Auckland, pp.43-44, in Berghan Supporting Papers, vol.6, pp.3458-3459.

> Upon a more minute examination of the country surrounding it, I think it will be found eventually to bring into close connection the important harbours and water communication of the Bay of Islands and Whangaroa on the Eastern side, and of Hokianga on the West; more especially if I should succeed in acquiring the adjoining Blocks known as Pirau and Mokau. The interior communication is unusually good for this country, and it presents also the advantage of being *unoccupied by the Natives*. The district thus described comprises the land from whence the three rivers emptying themselves into the Bay of Islands, Hokianga, and Whangaroa, take their rise, and adjacent to which is the spot selected by Sir George Grey as an inland Township or Military post.[1090]

Kemp also observed that the Omawake block was bounded in part by the grant of James Shepherd, no survey of which had ever been made, or the boundaries defined of the quantity granted, 'by which to guide the Government, the claimant, or the Natives'. This was, he added, far from an isolated case, but once the area granted to Shepherd had been surveyed he believed that 'the *surplus*, together with what has *now* been purchased, will form a considerable Block, over which the Native title has been extinguished, becoming at once the property of the Crown, probably to an extent of twenty thousand acres'.

Kemp may have hoped that the purchase of the strategically-important Omawake block would provided him with an inroad into the Omapere district, but progress was grindingly slow, with just one small 500-acre block, Okokako, close to the CMS lands at Waimate, purchased at the Bay of Islands over the next two years.[1091] Kemp had noted some of the difficulties he encountered at the Bay of Islands in a general report written in April 1856 in which he observed that:

> The Government is hardly aware of the extent of its possessions, the Native title to which has been extinguished many years since, and taken for scrip; but

[1090] Kemp to McLean, 28 February 1856, AJHR, 1861, C-1, p.5, [docs, vol.12, p.3863]. Emphasis in original.

[1091] AUC 38, LINZ, [docs, vol.22, pp.7241-7247]; Turton's Deed No.33, Province of Auckland, pp.47-48, in Berghan Supporting Papers, vol.6, pp.3461-3462.

> as no surveys have been made, and many of the original sellers have been removed by death or other causes, some difficulty will be found in reclaiming this land; hence it is that the greatest care and caution is requisite in fixing the boundaries of such blocks as are now being offered for sale; one great object indeed has been, to *unite*, as well as to extend, the property of the Government, and as these purchases proceed, to elicit from the Natives an acknowledgement of the title of the Crown to lands they originally sold to the Europeans under the arrangements above mentioned.[1092]

Land was offered for sale all over the district, he claimed, 'but not in very large blocks, perhaps from one to five thousand (1,000 to 5,000) acres, having a equal proportion of good and bad soils, and in some parts very fine timber'. Privately he reminded McLean:

> It will always be remembered I hope that I have to play my cards very carefully with the Natives here, so as not to encroach upon lands already sold, & that in carrying on the negotiations these points have at the present time to be sought out and determined before finally settling.[1093]

McLean evidently remained unconvinced, however, informing Kemp officially in October 1856 that:

> Tamati Waaka, when last in Auckland, suggested with reference to Okaihau that it would be advisable to purchase the whole of the land from Te Wiroa to Hokianga, including Okaihau, instead of purchasing in small quantities.
>
> If such a idea is enunciated by Te Waaka, it does not appear impracticable to make arrangements in future for the acquisition of land on a much larger scale, and in a much less expensive manner than is suggested in your letters.[1094]

[1092] Kemp to McLean, 6 April 1856, AJHR, 1861, C-1, p.6, [docs, vol.12, p.3864]. Emphasis in original.

[1093] Kemp to McLean, 18 March 1857, McLean Papers, folder 368, ATL, [docs, vol.10, p.3135].

[1094] McLean to Kemp, 3 October 1856, AJHR, 1861, C-1, p.12, [docs, vol.12, p.3867].

But by early in 1857 it appeared Kemp's patient approach to the Okaihau (or Mawhe) lands was starting to bear fruit. In February 1857 he wrote to McLean privately:

> Mawhe: on this subject I must tell you I feel great interest: I am more than anxious that it should succeed because it is a delicate & difficult one. Over & above that, it is admitted to be the Garden of the Bay. People think that the whole of it would realize from £2 to £5 per acre & supposing an inland Township laid off, very much more. I have asked for £2000. I shall rely upon your getting it for me and forwarding to the Sub Treasury...The amount seems large, when compared with the acreage, but the number of influential claimants is so large that anything less would dwindle into nothing.[1095]

In his official request for authority to purchase the Mawhe block for the sum of £2000, Kemp noted that Tamati Waka, Patuone, Ururoa, Hongi, Mohi Tawhai, Arama Karaka, Rewa and many of the other most influential chiefs in the north were all claimants to the land. Sir George Grey had, during a visit to the north following the war there, selected Okaihau as 'a site in every way suitable for an inland settlement and military post, comprising, as it does, some of the finest arable land beautifully situated on the shores of Omapere lake, commanding a central position, and the key to the whole of the interior'. Kemp added that the block contained not more than 5000 acres but was 'uninhabited by the natives'.[1096] His idea of what constituted 'uninhabited' was, however, clearly at variance with Māori food gathering practices given the long-standing dispute as to fishing rights at the lake.

Yet despite Kemp observing that if purchased the block 'would form at once the nucleus of an important European settlement', his request for £2000 was met with a blunt response from the Chief Commissioner the following month. McLean informed Kemp that the request was receiving the attention of the government, but it was unlikely that they would approve paying £2000 for 5000 acres of land, however

[1095] Kemp to McLean, 8 February 1857, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3131-3133]. Emphasis in original.

[1096] Kemp to McLean, 3 February 1857, AJHR, 1861, C-1, pp.15-16, [docs, vol.12, pp.3867-3868].

valuable it might be. Meanwhile, Kemp was instructed to ascertain 'the lowest price at which it can be obtained' and report this information to the government'.[1097] Kemp's private note to McLean had suggested that the block could expect to realise at least £10,000 to £25,000 for the government when resold as farm land, and substantially more than this if cut up for a township. Clearly, though, the government sought a much higher profit rate on the Okaihau lands before it would consent to the purchase.

Kemp reported a few weeks later that Waka Nene had given notice at a recent hui of his intention to remove the bones of some of his relatives, 'with a view to preliminary arrangements being made for the sale of the district to the Government'. However, nothing further had transpired at the meeting and Kemp recommended that it now rested with the government to indicate the price they would be prepared to pay for the Okaihau block in order to restart negotiations.[1098] But in June 1857 T.H. Smith officially informed Kemp that 'the price named by you – viz., Two thousand pounds (£2,000) for a block estimated at five thousand acres appears so extravagant that the Government will not entertain the matter of the purchase unless there is reason to suppose that the demands of the natives will be brought within more reasonable limits'.[1099]

Kemp clearly had not abandoned his efforts to secure the 'Garden of the Bay', however, and in February 1858 listed £1000 as the probable cost of securing the Okaihau block in an estimate of proposed expenditure on land purchases in the district.[1100] In March 1858 he further reported that the survey of the Okaihau (or Mawhe) block had now been completed, confirming the earlier estimated area of the block as being approximately 5000 acres. Contradicting his earlier assertion that the block was 'uninhabited', Kemp now reported that the adjustment of the numerous claims on the land, 'followed by the survey of a few Native reserves (presently in

[1097] McLean to Kemp, 10 March 1857, AJHR, 1861, C-1, p.18, [docs, vol.12, p.3868].

[1098] Kemp to McLean, 26 March 1857, AJHR, 1861, C-1, pp.19-20, [docs, vol.12, pp.3868-3869].

[1099] Smith to Kemp, 19 June 1857, *Epitome*, C, p.26.

[1100] Kemp to McLean, 16 February 1858, AJHR, 1861, C-1, p.24, [docs, vol.12, p.3871].

occupation) within the Block will, I think, convince the Natives of a liberal arrangement on the part of the Government'. The government's 'liberal' terms evidently now included the proposal that the owners of Okaihau should pay for at least half of the cost of survey of the reserves, 'forming as it were, a deduction from the price which may be paid for the entire block'.[1101] The owners had now declined to sell the Okaihau forest, he added, as a consequence of which the sum of £800 to £1000 would probably be sufficient to secure the block, which he now thought to be worth 'at least £5000'. Yet given that he had consistently estimated the block area at about 5000 acres, it seems apparent that his reference to the forest was simply a face-saving effort on Kemp's part, having been so bluntly knocked back by the government in his earlier requests for £2000, despite his private urgings to McLean to secure the amount for him in order to unlock the rich Omapere district.

Clearly he was still under pressure to reduce the asking price even further, however, and in October 1858 Kemp was able to report that the sum of £450 had finally been fixed for the block.[1102] On 8 December 1858 Tamati Waka and eight other chiefs signed the deed for the Okaihau No.1 block, now described as 4554 acres, and received the £450 sum agreed for the land, along with the reserves marked on the accompanying plan.[1103] That sum would not have secured the lands just 12 months earlier, but much had changed in the interim. Proposals that Okaihau should form an inland township as part of the Bay of Islands Settlement Act of 1858 constituted in large part the 'real payment' for the block. And although a township was subsequently established at Okaihau, which had been subdivided for these purposes by 1861,[1104] the Crown quickly lost interest in implementing the legislation on the more comprehensive scale originally promised, ensuring (as was noted in an earlier section) that Bay of Islands Māori were still awaiting the promised benefits of transacting their lands with the Crown at the end of the period covered by this report.

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[1101] Kemp to McLean, 17 March 1858, AJHR, 1861, C-1, p.25, [docs, vol.12, p.3871].

[1102] Kemp to McLean, 2 October 1858, AJHR, 1861, C-1, p.30, [docs, vol.12, p.3874].

[1103] AUC 1, LINZ, [docs, vol.22, pp.7183-7184]; Turton's Deed No.37, Province of Auckland, pp.52-54, in Berghan Supporting Papers, vol.6, pp.3466-3468.

[1104] Andrew Sinclair to Inspector of Public Works, 6 March 1861, IA 1/1870/1329, Arch-NZ, [docs, vol.3, pp.1011-1056].

Kemp observed in forwarding the deed to McLean that, despite the 'unreasonably high' sum initially sought by the owners of the Okaihau block, the Crown had managed to secure the lands for less than what Sir George Grey was prepared to offer many years earlier, when the site had first been earmarked for a military post.[1105] The Crown had secured the 'Garden of the Bay' at the bargain rate of less than two shillings per acre. Promises of townships and other benefits arising from the renewed alliance with Northern Māori after January 1858 were certainly beginning to work in the Crown's favour, as Kemp himself had suggested in October 1858, when noting that 'the terms under which the Government propose to deal with them for their waste Lands are now becoming better understood'.[1106] In fact, prior to the renewed alliance and Browne's promise of a township, the Crown had secured less than 10,000 acres at the Bay of Islands by way of Crown purchasing. In the period between January 1858 and the abolition of the Land Purchase Department in 1865 close to 100,000 acres was purchased by Kemp on behalf of the Crown.

The January 1859 sale of the 7224-acre Mokau block, the subject of a detailed case study in the following chapter, was also evidently motivated by the desire to establish a settlement on the land,[1107] as was the June 1859 transaction of the 15,000-acre Kawakawa block. In April 1861 Kempthorne, the surveyor, reported that local Māori generally were 'very anxious' to see a township laid out at Kawakawa.[1108] In fact Kemp had been instructed to focus his efforts on the Kawakawa area, partly in response to criticisms that he had given undue attention on the northern part of the Bay of Islands at the expense of other areas where the owners had shown a willingness to deal with the Crown. In November 1857 the Mangonui Resident Magistrate, W.B. White, informed McLean privately following a recent visit to the Bay of Islands that he had:

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[1105] Kemp to McLean, 20 January 1859, AJHR, 1861, C-1, p.34, [docs, vol.12, p.3876].

[1106] Kemp to McLean, 16 October 1858, AJHR, 1861, C-1, p.31, [docs, vol.12, p.3874].

[1107] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873]; AUC 13, LINZ, [docs, vol.22, pp.7214-7215]; Turton's Deed No.38, Province of Auckland, pp.54-55, in Berghan Supporting Papers, vol.6, pp.3468-3469.

[1108] Kempthorne to Inspector of Public Works, 22 April 1861, IA 1/1870/1329, Arch-NZ, [docs, vol.3, pp.1008-1010].

> much conversation with the Williams: they seem much dissatisfied that Kemp seems to confine his purchases in the neighbourhood of the Kerikeri tho land has been offered to the Colony [?] between Pakaraka & Kawa Kawa. I went over a portion of it[;] it is good land and would sell readily indeed[.] the Williams would have purchase[d] it for the govt. if allowed long go [sic]. they are anxious to see settlers about them and say that the natives will sell all the best districts about there if these blocks now offered were purchased[.] my opinion is that the native title should be extinguished over all lands as soon as possible, and without hazarding an opinion on this matter, I would urge you to hasten Kemp in this matter.[1109]

This was not the first time the acquisition of the Kawakawa lands had been urged. In fact, it had much earlier been under consideration as a possible location for the first group of Nova Scotian settlers who eventually set up home at Waipu. In July 1854 D. McLeod wrote to McLean from Russell that:

> There is a large extent of magnificent country on the Kawa Kawa River, in this Bay, to be disposed of by the Natives, as I understand, which would suit our people admirably, or any other large body of immigrants that might choose to locate there, if it were purchased by Government. I am told that there are other parts also for sale around the harbour, which would effectually open this Bay for a numerous population, if secured by you on behalf of the Government. I feel very anxious, therefore, for the completion of these purchases; and am sure you will readily perceive the incalculable advantage of securing such extensive & fertile positions if even exclusively of any reference to the ultimate determination of our Nova Scotians.[1110]

But without any permanent District Commissioner in the Bay, and with relations between the Crown and the Bay tribes still to be mended, the prospects of completing such a purchase in 1854 were bleak. By late 1857, when the owners of the Kawakawa

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[1109] White to McLean, 10 November 1857, McLean Papers, folder 633, ATL, [docs, vol.10, pp.3320-3321].

[1110] D. McLeod to McLean, McLean Papers, folder 438, ATL, [docs, vol.10, p.3173].

block among others were busily planning the re-erection of the flagstaff on Maiki Hill, prospects were much improved, and McLean wrote to Kemp officially just over a month after receiving the letter from White with instructions that:

> A desire having been expressed by the Natives to sell other and more valuable lands for immediate occupation than those in the Northern extremity of your district, you will be good enough to direct your attention to the acquisition of those lands which are more immediately required for settlement, without overlooking the offers of such larger and less valuable blocks that may be offered; but in every instance you should give prior consideration to such blocks as the Kawa Kawa, and others in that vicinity, which I understand the Natives are anxious to dispose of.[1111]

Kemp clearly took this message on board, and by February 1858 Kawakawa was listed among the blocks which he expected to acquire in the near future.[1112] In October 1858 Kawakawa, described as being 5000 acres in extent, was listed among the blocks which Kemp was proposing to survey and purchase over the coming summer.[1113] But by the time that the survey of the block was completed in April 1859 it had swollen in size to an estimated 50,000 acres, as three formerly separate blocks were evidently combined into one large one (Kawakawa, Pukekohe and Ruapekapeka). Kemp had reported that he was in negotiation with Maihi Paraone Kawiti and other owners for the estimated 10,000-acre Ruapekapeka block, located on the south bank of the Kawakawa River, in June 1858.[1114] The previous month he had reported entering negotiations in respect of the 2000-acre Pukekohe block, on the northern bank of the Kawakawa River, and adjoining what he then described as being the Kawakawa block.[1115]

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[1111] McLean to Kemp, 21 December 1857, AJHR, 1861, C-1, p.23, [docs, vol.12, p.3870].

[1112] Kemp to McLean, 16 February 1858, AJHR, 1861, C-1, p.24, [docs, vol.12, p.3871].

[1113] Kemp to McLean, 16 October 1858, AJHR, 1861, C-1, p.31, [docs, vol.12, p.3874].

[1114] Kemp to McLean, 28 June 1858, AJHR, 1861, C-1, p.27, [docs, vol.12, p.3872].

[1115] Kemp to McLean, 7 May 1858, AJHR, 1861, C-1, p.26, [docs, vol.12, p.3872].

In December 1858 Kemp reported, with reference to the Pukekohe and Ruapekapeka negotiations, that 'the Native sellers have from the first considered the sums offered them, viz., Three hundred pounds (£300) for each block, as too low'. Kemp defended the prices named as 'liberal offers' taking into account the position and quality of the land in question relative to average prices paid for other blocks, but reported that as 'some difference of opinion existed as to the quantity as well as the quality of the lands offered', he had further inspected the blocks and had proposed to extend the boundaries with a view to a larger sum being offered and in order to simplify their survey. He also noted that the owners had agreed to his suggestion that the two blocks be combined into one enlarged block, containing between 18,000 and 20,000 acres. Although the owners had agreed to combined the blocks, they declined to accept his further 'liberal' offer of £1000 for the new block, as a consequence of which he had deemed it prudent to suspend further negotiations pending the decision of the government.[1116]

McLean, meanwhile, evidently forwarded Kemp a letter of complaint concerning the prices offered for the lands in question and observed that 'if the land is really valuable and extensive the price should be fairly proportionate to its actual value'. He further noted his intention to shortly visit the Bay of Islands, at which time the question could be resolved.[1117] McLean reached the Bay of Islands just a few days later and observed in his journal on 20 December 1858 that:

> From what I hear, Kemp has been very neglectful of purchases here; being too dandified and proud for his duties. I think I must visit the Kawa Kawa to start that purchase which is very important, for the future site of a town; as, being on the terminus of the Great North Road; and opening up a country inland that no other part about here possesses to an equal extent.[1118]

[1116] Kemp to McLean, December 1858, AJHR, 1861, C-1, p.33, [docs, vol.12, p.3875].

[1117] McLean to Kemp, 14 December 1858, AJHR, 1861, C-1, p.33, [docs, vol.12, p.3875].

[1118] McLean, Journal (typescript), 20 December 1858, vol.4, MS-1287, ATL, [docs, vol.24, pp.8369-8370].

He considered it 'of vital importance to have this land acquired as soon as possible' and arranged to meet with the claimants to the land at Kawakawa a few days later. Upon inspection of the block, McLean estimated its contents at approximately 38,000 acres and described the land as 'variable, containing some rich valleys; and here and there some patches of wood-land'. Much of the block was easily cultivated and surrounded by rivers. He considered that its position alone would make Kawakawa 'a very valuable acquisition' and thought the land should be surveyed at once. But although his journal confirms that McLean met with the claimants to the land on 22 December 1858, it says nothing of how he sought to resolve the issue of the price to be paid for the lands in the Kawakawa district or the outcome of the hui.[1119]

Privately, however, Kemp informed McLean in February 1859 that '[t]he Kawa Kawa surveys are going on nicely'. He also observed that, 'they are a troublesome party to handle, but with a little gentle dealing, I think we shall do the thing very satisfactorily'.[1120] Two months later he officially reported the completion of the survey of the Kawakawa block, now estimated at 50,000 acres in extent including reserves of about 1500 acres. In order to avoid any delay in completing the transaction, he had requested a rough copy of Kempthorne's plan of the block to attach to the deed and had made arrangements for a meeting at which the payment was to be made, which he hoped to be able to report on within a few days.[1121] T.H. Smith, meanwhile, informed McLean a few days later that the surveyed block contained 38,000 acres and commented:

> How about a township. The natives consider that the Govr. is to a certain extent pledged to form one as they were urged when asking for one to offer a large extent of country.[1122]

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[1119] McLean, Journal (typescript), 22 December 1858, vol.4, MS-1287, ATL, [docs, vol.24, pp.8372-8376]; McLean, Diary, 1 January 1859 - 7 January 1859, MS-1246, ATL, [docs, vol.24, pp.8426-8433].

[1120] Kemp to McLean, 20 February 1859, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3143-3144].

[1121] Kemp to McLean, 21 April 1859, AJHR, 1861, C-1, pp.35-36, [docs, vol.12, pp.3876-3877].

[1122] Smith to McLean, 29 April 1859, McLean Papers, typescript, MS-1321, ATL, [docs, vol.9, p.2823].

Kemp informed McLean privately on 24 May 1859 that he was about to pay for the Kawakawa block, the 'survey of which is completed, Reserves & all, nearly 50,000 acres'.[1123] Conspicuously lacking in all of this correspondence thus far, however, was any indication that the owners of the block had actually agreed to a price for the lands. Kemp, reporting officially on the deed signing for the Kawakawa block which took place on 2 June 1859, noted that, after several addresses had been made by the chiefs, 'as is the custom on these occasions', Maihi Paraone Kawiti had 'stated his unwillingness to receive the sum of Two thousand pounds (£2,000), which had been fixed by the Government as a fair and reasonable payment for the Block'. He had, Kemp added, formerly reported that the block was divided into two portions, located on the northern and southern banks of the Kawakawa River, the two blocks being 'in point of value...nearly equal, but not in extent', and with Kawiti's claims 'chiefly confined to the Southern portion'. Proceedings were finally brought to a close, Kemp reported, when Tamati Pukututu and others eventually agreed to accept £1000 for the block located on the northern bank (which appears to have included Pukekohe), comprising 'the finest part of the land in the entire Block, and...a valuable addition to the Crown Lands in this District'.[1124]

Kemp had attended the deed signing expecting to purchase land on both banks of the Kawakawa River, which doubtless explains why no plan was attached to the Kawakawa deed, despite the months of survey work done in the area and his prior indication that one would be furnished with the deed.[1125] Whilst supposedly abstaining from any comment on Kawiti's behaviour, Kemp strongly urged the government not to sanction any increase to the £1,000 sum set apart for the southern portion of the block, 'as besides being its full value, the effect would be prejudicial upon the minds of the other section of his tribe, who have willingly met the terms of the Government, and are in other respects a well conducted body of Natives'.[1126]

[1123] Kemp to McLean, 24 May 1859, McLean Papers, folder 368, ATL, [docs, vol.10, p.3151].

[1124] Kemp to McLean, 10 June 1859, AJHR, 1861, C-1, p.36, [docs, vol.12, p.3877].

[1125] AUC 14, LINZ, [docs, vol.22, pp.7216-7217]; Turton's Deed No.39, Province of Auckland, pp.55-57, in Berghan Supporting Papers, vol.6, pp.3469-3471.

[1126] Kemp to McLean, 10 June 1859, AJHR, 1861, C-1, p.36, [docs, vol.12, p.3877].

Privately, Kemp advised McLean in August 1859 that the survey of the Kawakawa block had been completed, '40,000 acres: one half of wh. has been paid for & is the best half. the other side of the river is principally claimed by Kawiti's son, who asks for more than his fair share of the money: He will probably take it in a short time'.[1127] Smith, writing the previous month, was similarly upbeat about the prospects of Kawiti coming round to the Crown's price.[1128] It would, however, take a further five years to acquire the Ruapekapeka portion of the block, by which time, ironically, the discovery of coal fields on the land would help to ensure the price paid for the block was closer to the figure Kawiti evidently had in mind in 1859.

Kemp may have been disappointed to miss out on the full block in 1859, but according to the *Southern Cross* newspaper, the owners of the land considered that they had been 'taken advantage of by the Government' in its purchase of Kawakawa. According to this account, the owners had agreed a price between £4000-£5000 for the block on both sides of the river, but had been 'induced to complete the sale for a portion – stated to be the finest – on the understanding that the rest was to be presently taken up, at the price agreed on, but that this part of the engagement was not adhered to'.[1129] As noted previously, in discussing Kawiti's subsequent dismissal from the position of Assessor for his alleged role in condoning the killing of a man believed to have caused the death of his brother through 'witchcraft', some believed that the latter story had merely been invented as a convenient cover for the fact that Wikiriwhi had died as a consequence of anguish and remorse felt at having fallen for Kemp's alleged trap. Whether true or not, there certainly appears to have been more going on behind the scenes with respect to the Kawakawa purchase than is fully revealed in Kemp's brief reports on the subject.

Dissatisfaction with the process by which the Kawakawa block had been acquired may have been reflected in another falling off in terms of Crown purchasing at the Bay of Islands. In fact, no further block of more than 1000 acres in extent was

[1127] Kemp to McLean, 1 August 1859, McLean Papers, folder 368, ATL, [docs, vol.10, p.3155].

[1128] Smith to McLean, 13 July 1859, McLean Papers, typescript, MS-1321, ATL, [docs, vol.9, p.2829].

[1129] *Southern Cross*, 1 November 1859, 17 January 1860, [docs, vol.19, pp.6521-6522, 6550-6552].

purchased for at least the next four years. Kemp's next few successful purchases at the Bay of Islands involved a number of small but valuable blocks. In February 1858 he had reported that '[s]everal small Blocks, immediately in the vicinity of, and joining, the proposed site for a Township' were 'now under negotiation, agreeably with Mr. Whitaker's verbal instructions'.[1130] In June 1858 Te Wharau, a small block, 'a few acres only, in a commanding position, offered for sale by the Chief Ruhe and others' was listed among the blocks under negotiation. Its survey had already been completed.[1131] In October Kemp noted that the price for the block, surveyed at just over 81 acres, had now been fixed at £10, which was (along with Hikuwai and other small blocks being purchased at this time) much lower, he noted, 'than I had any reason to expect under the circumstances'.[1132] Bay of Islands Māori were offering lands to the Crown at discounted rates, in other words, in expectation of the benefits the promised township would bring – though ironically Crown efforts to extinguish native title over the Kerikeri area would make it that much more difficult to reap those benefits, if and when the long awaited township was established. The Wharau block, one of the last remaining pieces of Māori land in the Kerikeri Inlet, was purchased from Tango Hikuwai on 21 January 1860 for the sum of £10.[1133] Two small blocks near the confluence of the Mangonui and Kerikeri rivers, Te Kauri (280 acres) and Patunui (188 acres) were also purchased by Kemp from Ngāti Rehia and Te Hikutu respectively on the same date.[1134] Both were again within the limits of the area proclaimed under the Bay of Islands Settlement Act and again clearly transacted at a lesser rate in return for the expected benefits promised by the Bay of Islands Settlement Act.

Meanwhile, Kemp was not too busy to lend a helping hand to his missionary friends. According to Barry Rigby, Henry Williams, stung by criticism that he had failed to set

[1130] Kemp to McLean, 16 February 1858, AJHR, 1861, C-1, p.24, [docs, vol.12, p.3871].

[1131] Kemp to McLean, 28 June 1858, AJHR, 1861, C-1, p.27, [docs, vol.12, p.3872].

[1132] Kemp to McLean, 25 October 1858, AJHR, 1861, C-1, p.32, [docs, vol.12, p.3875].

[1133] AUC 21, LINZ, [docs, vol.22, pp.7223-7224]; Turton's Deed No.41, Province of Auckland, pp.58-59, in Berghan Supporting Papers, vol.6, pp.3472-3473.

[1134] Turton's Deed No.9 (Te Kauri Block), Province of Auckland, pp.10-11; Turton's Deed No.10 (Patunui Block), Province of Auckland, pp.11-12, in Berghan Supporting Papers, vol.6, pp.3447-3449.

aside any reserves for Māori use and occupation in his extensive purchase of Pakaraka, instructed the surveyors to remedy this in deficiency in the 1850s, when the land was surveyed.[1135] The Ngahikunga Reserve at 186 acres was by far the largest of the three reserves set aside at this time, but was purchased by Kemp on 16 February 1860 for the sum of £50, before being sold back to Williams at £93 soon after.[1136] Church and state thus successfully worked together to deprive Bay of Islands Māori of yet more land, though at least the superficially philo-Māori Williams could say that he had set aside a reserve, albeit of fleeting existence.[1137]

The 875-acre Te Hikuwai block, purchased by Kemp on 20 March 1860 for the sum of £35,[1138] was also among the small blocks identified by him in June 1858 for acquisition.[1139] The small purchase price (equating to about 9.6 pence per acre) may have been related to the fact that the block substantially overlapped with the 'surplus' from Shepherd's Waitete old land claim. Lands supposedly already owned by the Crown under its confiscatory surplus lands policy were in some cases being paid for a second time in an effort to extinguishing ongoing Māori claims to ownership.[1140]

In the absence of the long-promised township at Kerikeri, the small settlement of Russell remained the main township in the north for the time being. But the purchase of three small allotments, totalling less than three-quarters of an acre, in the township in January 1862 helped to further reduce the Māori presence in the settlement.[1141] Kemp reported in December 1861 that he had, 'agreeably with the Governor's verbal

[1135] Daamen et.al., p.139.

[1136] AUC 11, LINZ, [docs, vol.22, 7205-7206]; Turton's Deed No.42, Province of Auckland, pp.59-60, in Berghan Supporting Papers, vol.6, pp.3473-3474; Daamen et.al., p.139.

[1137] Tango Hikuwai also signed a deed in May 1863, extinguishing his claim over a wāhi tapu known as Paokarokaro, within the boundaries of the CMS 'Children's Land' at Kerikeri, in return for receiving a horse. Turton's Deed No.63A, Province of Auckland, p.87.

[1138] AUC 5, LINZ, [docs, vol.22, pp.7188-7189]; Turton's Deed No.43, Province of Auckland, pp.60-61, in Berghan Supporting Papers, vol.6, pp.3474-3475.

[1139] Kemp to McLean, 28 June 1858, AJHR, 1861, C-1, p.27, [docs, vol.12, p.3872].

[1140] Daamen et.al., pp.133-134.

[1141] AUC 29, LINZ, [docs, vol.22, pp.7233-7234]; Turton's Deed No.45, Province of Auckland, pp.63-64, in Berghan Supporting Papers, vol.6, pp.3477-3478.

instructions', arranged for the purchase of the allotments for the sum of £165. All three sections were, Kemp noted, 'situated in a central part of the front street in the town of Russell, are of considerable value, and would...if cut up and open for sale, more than reimburse the Government in the amount required for the extinguishment of the Native title, which for many reasons, it was desirable should now be done'.[1142] Those reasons, though left unexplained, were evidently deemed sufficient to authorise completion of the purchase on the terms outlined and a deed was accordingly signed on 14 January 1862.[1143]

Although no documentary evidence appears to have survived with respect to Kemp's purchase of the Opokeka block in October 1863, beyond the deed itself and accompanying rough sketch plan,[1144] this clearly indicates that the transaction was intended at least in part to settle disputed claims as to the boundary line of the Kawakawa block. In June 1861 Kemp had reported that the only Māori claim he was aware of relating to Crown purchases in the district was one from Maihi Paraone Kawiti with respect to about 800 acres of the Kawakawa block, for which Kawiti was seeking the sum of £200, on the basis that 'he did not receive...a fair share of the payment which was by general consent and arrangement apportioned to Marsh Browne and his immediate followers for that particular portion of the block.[1145] The rough sketch plan accompanying the deed (signed by Kawiti and Wi Te Hakiro) indicates that part of the new deed encompassed a disputed portion of the block, and other portions were new additions to the block. Other evidence contained with it, suggests that the new deed may have encompassed an area of 2000 acres, for which the sum of £450 was paid.

[1142] Kemp to Native Minister, 16 December 1861, AJHR, 1862, C-1, p.373, [docs, vol.24, p.8156].

[1143] Crown officials had been in negotiations for the Russell allotments since at least September 1861, with Kemp apparently having little input into the price paid. Kemp to R.C. Barstow, 21 September 1861, BAVX 4817/7c, Arch-NZ (Akl), [docs, vol.23, pp.7743-7744].

[1144] AUC 410, LINZ, [docs, vol.22, pp.7508-7511]; Turton's Deed No.47, Province of Auckland, p.65, in Berghan Supporting Papers, vol.6, p.3479.

[1145] Kemp to Chief Commissioner, 10 June 1861, AJHR, 1861, C-1, p.45, [docs, vol.12, p.3881].

The 243-acre Whangae block, purchased by Kemp on 18 January 1864 for the sum of £220,[1146] would appear to be a reserve from the former Kawakawa block purchase, judging by the fact that it was entirely encompassed by the latter block, though the absence of a plan attached to the 1859 deed makes this difficult to be certain.[1147] Kemp reported in February 1864 with respect to this and the nearby Te Kauri block, a 35-acre tract which also appears to have been a reserve and was purchased on the same date for the sum of £30,[1148] that the purchase of both lots would be 'the means of giving additional value to the Kawa Kawa Block, and afford easy access from the harbour whenever it shall be settled upon'.[1149]

Kemp had referred the question of a suitable price for the Whangae block to R.C. Barstow, the local Resident Magistrate, who had declared himself 'somewhat puzzled' as to what he should name as a fair price for the land, given there were 'so many accidental circumstances to be taken into consideration, beyond the mere agricultural value of the land'. Ten shillings an acre had already been offered for the block by a private settler and declined, and Barstow reported that the fact that it was already surveyed enhanced its value by the amount of cost of survey'. He also noted the existence of 'the whares, fencing, and clearing, in addition to it possessing by far the best landing and road for a large portion of the Kawa Kawa Block'. Acquisition of the Whangae block would, he believed, increase the value of at least 5000 acres of the Kawakawa block by a shilling per acre, 'owing to the near contiguity of so much of it to the water-carriage, and a good sum would be saved in road-making'. Much 'future annoyance' from cattle trespass would also be avoided from the fact the block was 'covered to some extent with grass, and well sheltered' and would therefore attract animals to it. Overall, he recommended, that '£200, or £250, would be a low price, if the land could be obtained for that sum'.[1150]

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[1146] AUC 419, LINZ, [docs, vol.22, pp.7512-7515]; Turton's Deed No.48, Province of Auckland, pp.65-66, in Berghan Supporting Papers, vol.6, pp.3479-3480.

[1147] See Fig.24, Daamen et.al., p.145.

[1148] AUC 420, LINZ, [docs, vol.22, pp.7516-7519]; Turton's Deed No.49, Province of Auckland, p.66, in Berghan Supporting Papers, vol.6, p.3480.

[1149] Kemp to Colonial Secretary, 10 February 1864, *Epitome*, C, p.35.

[1150] R.C. Barstow to Kemp, 16 February 1864, *Epitome*, C, p.36.

In the event the two blocks were purchased from Maihi Paraone Kawiti and others for the total sum of £250. But the much larger block which had eluded Kemp since 1859 was now in his sights. The District Commissioner may have formerly considered the Ruapekapeka block – the southern half of the Kawakawa block which had been excluded from the 1859 deed at the last minute – to be relatively worthless, compared with the more valuable Kawakawa North block he had purchased for the Crown at that time. By 1864 Kemp had evidently been in negotiation for the Ruapekapeka block for at least two years, but just months after its survey was completed, a substantial coal deposit was found on the block, which subsequent tests confirmed was 'much superior to any coal as yet found in the Australasian Colonies or New Zealand'.[1151]

Kemp later testified before a specially-appointed Select Committee of the Auckland Provincial Council that he had offered the sum of £2800 prior to the coal discovery,[1152] but this had been rejected by the owners who had, from the first (that is, dating back to at least 1859), demanded the sum of £3800 for the Ruapekapeka block.[1153] Yet contradicting his own evidence that the owners had consistently sought £3800 for the block, Kemp informed the same inquiry that the owners had set a higher value on their lands subsequent to the discovery of the coalfield.[1154] If that was indeed the case then surely the owners would have asked for more than £3800 once the coal had been found. Either way, the Auckland Superintendent, Robert Graham, had lost no time in agreeing to the £3800 asking price once the coal find was confirmed. Kemp testified that although the land itself was 'very indifferent', the purchase was 'a very

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[1151] W. Wiseman, 19 December 1864, 'Reports of Experiments Made on Board H.M.S.S. "Curacoa" and "Falcon" to Test the Kawa Kawa Coal', A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, p.3, [docs, vol.14, p.4724].

[1152] However, in October 1863 E.M. Williams reported that the owners had been offered – and refused – the sum of £2000 for the block. E.M. Williams to R.C. Barstow, 11 October 1863, BAVX 4817/24b, Arch-NZ (Akl), [docs, vol.23, pp.7708-7709].

[1153] H.T. Kemp, 10 March 1865, 18 March 1865, Minutes of Evidence Taken Before the Select Committee on the Kawa Kawa Coal-Fields, A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, pp.15, 22-23, [docs, vol.14, pp.4734, 4741-4742].

[1154] H.T. Kemp, 10 March 1865, Minutes of Evidence Taken Before the Select Committee on the Kawa Kawa Coal-Fields, A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, p.16, [docs, vol.14, p.4735].

advantageous' one for the province.[1155] The 24,150-acre block was accordingly acquired for the sum requested on 11 June 1864.[1156] Kemp reported that in concluding the purchase 'a right of Road has been agreed upon & secured over any part of the Block, but more particularly with reference to the Coal field, & the construction of a Tramway which in all probability would have to pass through Native Reserves and other Maori land to the proper Landing'.[1157]

Kemp may have deemed this a sufficient safeguarding of Crown interests, but others evidently did not share this view, especially considering one of the reserves set aside out of the Ruapekapeka block passed within 400 yards of the mine.[1158] Kemp told the Select Committee inquiry in March 1865 that the owners had since agreed to accept the sum of 70 shillings per acre for the bush part of the reserve and a further 10 shillings for the open fern land.[1159] The following month, however, the Waimate Civil Commissioner, George Clarke Snr., was instructed to 'inform Mr. Kemp that his proceedings relative to purchase of Reserve at Kawa Kawa seem to have been quite unauthorised and cannot be sanctioned'.[1160] Kemp was accordingly informed of the government's views in May 1865,[1161] and arrangements were subsequently made for

[1155] H.T. Kemp, 18 March 1865, Minutes of Evidence Taken Before the Select Committee on the Kawa Kawa Coal-Fields, A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, p.22, [docs, vol.14, p.4741].

[1156] AUC 35, LINZ, [docs, vol.22, p.7240]; Turton's Deed No.50, Province of Auckland, pp.66-68, in Berghan Supporting Papers, vol.6, pp.3480-3482.

[1157] Kemp to Edward Shortland (Native Secretary), 16 June 1864, MA 13/80, Arch-NZ, [docs, vol.6, pp.1968-1970].

[1158] H. Graham, 23 March 1865, Minutes of Evidence Taken Before the Select Committee on the Kawa Kawa Coal-Fields, A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, p.23, [docs, vol.14, p.4742].

[1159] H.T. Kemp, 10 March 1865, Minutes of Evidence Taken Before the Select Committee on the Kawa Kawa Coal-Fields, A-4, *Journals of the Auckland Provincial Council*, Session XVIII, 1864-5, p.15, [docs, vol.14, p.4734].

[1160] H. Halse, Acting Native Secretary, to Clarke, 29 April 1865, BBIW 4808/3b, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, p.893.

[1161] Clarke to Kemp, 13 May 1865, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, p.54, [docs, vol.11, p.3617].

Clarke's own clerk and interpreter, William Kemp, to instead complete the purchase of the reserve.[1162]

H.T. Kemp appears to have simply ignored the letter from Clarke and proceeded with the purchase regardless. Thus by a further agreement dated 13 June 1865 the owners of the reserve acknowledged the receipt of the sum of £1106 for a 486-acre area, 'being a portion of the Kahikatea Bush land situated on the main stream of the Kawakawa, containing seven hundred and forty five (745) acres, which we the Maories reserved from the former sale'.[1163] Reporting on this addition to the Ruapekapeka block, Kemp observed that 'the land in question has been purchased with the view to the efficient working of the coal-mine'.[1164] However, at least one further glaring anomaly with respect to the original Ruapekapeka deed remained the reference to two of the 18 reserves shown on the plan being 'declared to be within the Govt. Land, vizt. [sic] Kaiwaka – 19 acres – and Te Maire – 11 acres'.[1165] This certainly appears to have puzzled Maihi Paraone Kawiti too, given his subsequent quarter-century long effort to have disputed portions of the block (including Kaiwaka and possibly Te Maire) returned to Māori ownership.[1166]

Kemp reported soon after completing the Ruapekapeka purchase in June 1864 that he had subsequently proceeded, under instructions from the Auckland Superintendent, to negotiate for the purchase of an allotment on the front street of the township of Russell, for which he had been authorised to pay up to £200 for its purchase. After agreeing on a rate of £2 10 shillings per foot frontage, the price of £197 10s was fixed for the allotment containing 1 rood and 29 perches. A deed to this effect was signed

[1162] Halse to Clarke, 17 June 1865, BBIW 4808/3b, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.899-900.

[1163] Turton's Deed No.50, Province of Auckland, pp.66-68, in Berghan Supporting Papers, vol.6, pp.3480-3482.

[1164] Kemp to Native Minister, 18 June 1865, *Epitome*, C, p.37.

[1165] Turton's Deed No.50, Province of Auckland, pp.66-68, in Berghan Supporting Papers, vol.6, pp.3480-3482.

[1166] To be discussed in chapter 7.

on 21 September 1864,[1167] but not without a fair degree of contention. Ihaka Te Tai's name was among the list of signatories to the deed, but had evidently been added by his older brother, Te Waka.[1168]

Te Tai later complained that he had objected to the transaction, and in particular to the inclusion among the vendors of some he considered not entitled to participate in the deal. His objections had been ignored by Kemp, supposedly on the basis that Te Tai was a minor whose protests were considered at the time 'trivial & untenable'.[1169] Yet given Te Tai had children of his own at the time of the deed signing and was probably about 25 years old this was clearly just a belated and rather desperate excuse for overlooking his opposition to the transaction.[1170] Te Tai evidently had a more fundamental reason for seeking to stop the sale in that both of his parents were buried on the section in question.[1171] McLean later admitted the validity of the claim but rejected the request for the land to be returned on the basis that a customs house had since been built there.[1172] In 1874 Parliament's Native Affairs Committee, in reporting on a petition from Ihaka Te Tai, concluded that 'the Petitioner is entitled to some consideration in consequence of his not agreeing to the sale to Mr. Kemp'.[1173] Whether Te Tai subsequently received compensation as recommended is unclear from

[1167] AUC 28, LINZ, [docs, vol.22, pp.7231-7232]; Turton's Deed No.52, Province of Auckland, pp.69-70, in Berghan Supporting Papers, vol.6, pp.3483-3484.

[1168] Native Affairs Committee, Minutes of Evidence of Wiremu Katene, 24 July 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, pp.8243-8244].

[1169] Kemp to H.T. Clarke, n.d. [c.July 1784], Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8260].

[1170] Native Affairs Committee, Minutes of Evidence of H.T. Clarke (Native Under Secretary), 30 July 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8251]; Steven Oliver, 'Te Tai Hakuene, Ihaka ?-1887', DNZB, vol.2, p.526.

[1171] Native Affairs Committee, Minutes of Evidence of Wiremu Katene, n.d. [c.30 July 1874], Le 1/1874/9, Arch-NZ, [docs, vol.24, pp.8258-8259]

[1172] Native Affairs Committee, Minutes of Evidence of Wiremu Katene, 24 July 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, p.8243].

[1173] Native Affairs Committee, Report on the Petition of Ihaka Te Tai, 18 August 1874, Le 1/1874/9, Arch-NZ, [docs, vol.24, pp.8240-8241].

the available sources,[1174] though the loss of the family urupā was not something for which monetary payment could ever come close to adequately compensating.

Two further sections at Russell were purchased at the same time as the transaction Te Tai had unsuccessfully objected to, including a second small allotment offered by the chief Kerei for the sum of £10, through which a line of road had been laid down on a plan,[1175] and a wāhi tapu located in the township. Kemp reported with respect to the latter that the sum of £50 had been offered to extinguish native title to 'a well known *Wahi Tapu*...joining the Customhouse', to which there were numerous claims'.[1176] No area was given for the wāhi tapu, known as Te Hikuwai, on the deed or plan attached to it.[1177]

In requesting authority to proceed with these three small purchases, Kemp had observed that '[t]he purchase of these lots will be the means of leaving the town free of any native claims, and will in other respects be an advantage to the white community, and, I think, also a great benefit to the natives'.[1178] But whether his objective was to free the town of 'native claims', or simply to free the town of 'natives' seems a moot point considering the combined impact of old land claims, the Crown's confiscation of the so-called 'surplus', and its mop-up purchasing of any bits of value left over. As Barry Rigby has observed, Bay of Islands Māori had been steadily shut out of the main centres of commercial development in the district, through their inability to retain an adequate land base in settlements such as Russell, Waimate and Kerikeri.[1179]

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[1174] Given that McLean, the then Native Minister, had proposed this motion in committee, it seems probable that some form of compensation was eventually paid. Native Affairs Committee Minute Book, 18 August 1874, Le 1/1874/9, Arch-NZ. [Unable to be copied].

[1175] Turton's Deed No.54, Province of Auckland, pp.72-73, in Berghan Supporting Papers, vol.6, pp.3486-3487. Although the date provided in Turton's (and AUC 55ii) for this deed is 21 September 1865, a memorandum on the original deed states that the first deed for this had been signed exactly a year earlier, on 21 September 1864, but that this had been '[m]ade out afresh' on parchment at the request of the Native Minister.

[1176] Kemp to Shortland, 16 June 1864, *Epitome*, C, p.37.

[1177] AUC 5, LINZ, [docs, vol.22, pp.7188-7189]; Turton's Deed No.51, Province of Auckland, pp.68-69, in Berghan Supporting Papers, vol.6, pp.3482-3483.

[1178] Kemp to Shortland, 16 June 1864, *Epitome*, C, p.37.

[1179] Daamen et.al., p.146.

Not that Kemp was quite finished. In fact, in November 1864 he completed the purchase of the 10,030-acre Okaihau No.2 block, purchased from 'the Tribe of Hokianga' for the sum of £1800.[1180] Kemp's report on the deed signing noted that the block contained 'Ten thousand acres of valuable Bush Land' and that the money had been paid subsequent to '[t]he usual Native Forms and ceremonies having been carefully gone through'. Kemp's brief report also noted that Tamati Waka Nene had rendered the government his 'best assistance' in completing the transaction and had helped to settle 'a point of importance' relative to the payment of the money.[1181]

Suggestions of a straightforward transaction are somewhat belied by the deed itself, however, which tends to indicate that the purchase was something of a mess, with a note on the text revealing that a disputed claim to part of a reserve was finally settled in December 1865 by the payment of £32. Meanwhile, Tamati Hapimana and others had written several letters protesting against the proposed sale.[1182] On 11 October 1864 they requested the intervention of the Waimate Civil Commissioner with respect to 'our piece of land which was taken by Henry Kemp at Okaihau' ('to matou pihi whenua, e tangohia ana e Te Henare Kepa i Okaihau'.[1183] Less than a fortnight later Hapimana and others informed the Civil Commissioner that they had 'written a letter to Henry Kemp reminding him not to give the money for our piece [of land] to anyone, because we do not agree to it being given over' ('Kua tuhituhi atu matou ki a Te Henare Kepa i tetahi pukapuka whakamahara ki a ia, kia kaua e tukua nga moni o ta matou pihi ki te tangata, no te mea e kore matou e pai kia tukua').[1184]

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[1180] AUC 2, LINZ, [docs, vol.22, pp.7185-7187]; Turton's Deed No.53, Province of Auckland, pp.71-72, in Berghan Supporting Papers, vol.6, pp.3485-3486.

[1181] Kemp to Native Department, 15 November 1864, BBIW 4808/3b, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, p.898.

[1182] See letters from Tamati Hapimana and others of 11 October 1864, 24 October 1864, 2 November 1864, 9 November 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.847-849, 863-864, 868-869.

[1183] Hapimana and others to Clarke, 11 October 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, p.849. Translation by Dr. Jane McRae, July 2006.

[1184] Hapimana and others to Clarke, 24 October 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.847-848. Translation by Dr. Jane McRae, July 2006.

Kemp met with Hapimana and others protesting the proposed transaction on 28 October 1864, where (according to a further letter from the group) the Land Commissioner had announced the governor's approval of the purchase and declared his intention to continue with his negotiations in respect of the block. Hapimana and the others again asserted that they would 'not agree to it being taken, even if someone argues for it to be given over, we will not agree to our piece of land being taken' ('e kore e whakaaetia e matou kia riro, ahakoa tohe te tangata kia tukua, e kore e pai matou kia riro ta matou pihi whenua').[1185]

Hapimana and the rest of those protesting the sale attended a further hui, this time held at Waihou and lasting two days, on 7 November 1864. They continued to remain firm in their opposition to the proposed transaction, but claimed that the main body of vendors had ignored their objections and instead had written to Kemp 'that they would give all of Okaihau to Henry and our piece that we are holding on to; and one of their statements was that they would secretly take the money for our piece' ('ka tukua katoatia e ratou a Okaihau ki a Te Henare me ta matou pihi e pupuru nei matou; tetahi o a ratou kupu, e tangohia pukutia te moni o ta matou pihi e ratou'). The chiefs accordingly requested that the Civil Commissioner:

> write some letters to Henry saying firmly to him that he is not to give money to anyone, and if [someone] goes to him arguing to give them the money for our piece, whether a chief or whether many, he is not to give it over on the sly and, if he gives over the money slyly to someone, then trouble will occur in our area. This is our reminder of that to you.
>
> On the other hand the correct procedure would be if we agreed to give it over to the Government; that would be right and there would be no trouble. Be quick with your letter to Henry because Henry's letter has gone to the Waihou chiefs to go there on the Friday of this week. Hence our urgent message to

[1185] Hapimana and others to Clarke, 2 November 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.863-864. Translation by Dr. Jane McRae, July 2006.

> you, to be quick with some letters before Henry gives the money into their hands.
>
> kia tuhia atu etahi pukapuka mau ki a Te Henare, kia mea pu atu koe ki a ia kia kaua ia e tuku i te moni ki te tangata, ina tae atu ki te tohe kia tukua ki a ratou nga moni o ta matou pihi, ahakoa rangatira, ahakoa tokomaha ranei, aua ia e tuku tahae; ki te tuku tahae ia i te moni ki te tangata, ka pa he raruraru ki waenganui i to tatou takiwa. He kupu whakamahara atu tenei na matou ki a koe.
>
> Erangi te mea tika na matou i whakaae kia tukua ki te Kawanatanga, ka tika, kahore he raruraru. Kia hohoro to reta ki a Te Henare, no te mea kua tae mai te pukapuka a Te Henare ki nga rangatira o Waihou, kia haere atu a te Paraire o tenei wiki. Koia ta matou kupu porangi ki a koe, kia horo etahi reta mau, keiwha tukua nga moni e Te Henare ki o ratou ringaringa.[1186]

This latest letter was dated 9 November 1864 (a Monday), just five days before the scheduled deed signing. George Clarke Snr. reassured the group that 'their land cannot legally be sold without their consent and…the Government would be the last to countenance such a procedure', at the same time forwarding a copy of their protest to Kemp the following day.[1187] Yet despite this continuing opposition to the transaction, the deed was duly signed on 12 November 1864 (a Thursday) – one day earlier than the opponents to the sale had apparently expected.

Somewhat surprisingly, Hapimana's name appeared among the list of vendors of the block, though given his previous opposition to the transaction, the extent to which he had freely and willingly agreed to the sale must surely be open to question. And significantly, even after the deed signing, some of those who had earlier protested against the transaction continued to voice their opposition to the deal. On 19

[1186] Hapimana and others to Clarke, 9 November 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.868-869. Translation by Dr. Jane McRae, July 2006.

[1187] Clarke to Kemp, 10 November 1864, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, p.47, [docs, vol.11, p.3611].

November 1864, Te Hoterene Matangi, Hone Matangi and Tamati Ngere Matangi wrote again to Clarke in relation to Okaihau, declaring that:

> We are resisting Henry giving over the money, we do not agree that the money be given. Well you said that if we agree it would be all right that our land be taken, but there is this, we did not agree. Henry just gave out the money, and the people themselves argued with us to give our piece to Henry. They agreed to Henry giving the money and Henry gave it to them, but that money Henry gave to them, we are giving back to him again.
>
> E pakeke nei matou kia tukua e Te Henare nga moni, kihai matou i whakaae ka tuku nga moni. Hoi ko to kupu tenei i mea koe, ki te whakaae matou ka tika te rironga o to matou whenua, tena ko tenei, kihai matou i whakaae. Ka tukua noatia nga moni e Te Henare. Na nga tangata ano e tohe nei ki a matou kia tukua to matou pihi ki a Te Henare. Na ratou i whakaae kia tukua mai nga moni e Te Henare, a, ka tukua e Te Henare ki a ratou, a, ko aua moni i tukua e Te Henare ki a ratou, e whakahokia atu ana e matou ki a ia ano.[1188]

This would tend to suggest that, although Tamati Hapimana had buckled under the pressure, others had not done so, or at least not yet, anyway. But now that the deed had been signed there was little that the non-sellers could do but seek a share of the payment. On 28 December 1865 further signatures were apparently added to the deed, including, it would seem, that of at least one of the chiefs who had previously held out against the alienation of his lands, Tamati Ngere Matangi. All of the indications suggest that this was yet another of those all too familiar shabby northern Crown purchases in which those who wished to retain their lands were left with no real choice in the matter. Other more minor anomalies in the deed suggest that Kemp's already low standards when it came to documenting his purchasing fully and properly had slipped even further by this time.

Certainly this is suggested by a second case in which the Waimate Civil Commissioner was also forced to intervene. In October 1864, at the same time that he

[1188] Te Hoterene Matangi and others to Clarke, 19 November 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.876-877. Translation by Dr. Jane McRae, July 2006.

was fielding complaints concerning the Okaihau No.2 block, Clarke wrote officially to Kemp concerning 'the very dissatisfied and disturbed state, of the Natives of this vicinity arising from a proposal made by Wi Hau and others of selling to you on behalf of the Government lands, a portion of which it is said they have no claim'. The disputed lands in question this time lay to the other side of the Okaihau No.1 block, being 'between Mawhe and Kaikohe', and Clarke informed Kemp that:

> You are aware that Ngatirangi and others some years ago disputed the claims of the late Hira Pure to this Land and would not allow the Surveyor to cut the lines as pointed out by Hira Pure. You are also aware of the pains taken by the opponents of Hira's claims who with the Assessors from every part of this District under the direction of the Resident Magistrate defined the boundary lines of the contending parties. Yet notwithstanding all this painstaking [work] by the Assessors and others in defining the respective claims it is a well known fact that the Surveyor – under the direction of Hira Pure surrepticiously [sic] surveyed and Mapped a different line to that agreed upon thereby including a large portion of land claimed by the Ngatirangi and others who are determined to oppose by every means the sale of this land.
>
> I regret to hear that a large amount of blame for this disquietude is by the Natives attributed to yourself by encouraging Wi Hau to persist in this sale. [B]ut this I trust is not correct yet you must be aware that such an impression though incorrect tends to weaken confidence in the Natives towards the Government if they believe that there is a bias to make a purchase to them so unjustifiable by one of its Officers.[1189]

Clarke requested that, under the circumstances, Kemp 'inform the contending parties that you will not proceed with the purchase until these claims are determined upon before the constituted Tribunal now established in this District', referring to the

[1189] Clarke to Kemp, 22 October 1864, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.44-45, [docs, vol.11, pp.3608-3609].

Native Land Court which had been proclaimed as having jurisdiction at the Bay of Islands less than two months earlier.[1190]

His letter followed alarming reports that Piripi Korongohi, Kou and others were 'going about armed and intend to do so if Wi Hau persists'. Kou, for one, although a government-salaried Assessor, freely admitted to the truth of such statements. He informed Clarke that:

> You may say that attention should be paid to the law but I will reply that you are being dishonest with us. What was Te Rangitake's cause? Was it not land? Listen to what we say: carrying arms will not cease [but] when Wi Hau is stopped, then the carrying of arms will stop. But as for Henry Kemp, say to him to stay away.
>
> E mea mai na koe, kia whakaaturia atu te ture, ka mea atu hoki ahau, e hianga ana koe ki a maua. He aha koia te take a Te Rangitake? Ehara koia i te whenua? Kia rongo mai koe i ta maua kupu, e kore e mutu te mau pu; kia mutu ra ano a Wi Hau, ka mutu te mau pu. Erangi ko Te Henare Keepa, meinga atu kia noho atu.[1191]

Questioned by the Civil Commissioner at the end of October 1864, Kou declared that he had told his party not to carry guns with them, but did not deny charges that he had led a taua against Te Uri-o-Hua, in which a whare had been burnt, flour stolen and pigs belonging to the rival hapū killed.[1192] Although the proposed transaction which had apparently prompted such unrest did go ahead at this time, and regardless of the accuracy of the allegations concerning the earlier survey of the lands, Kemp was clearly beginning to skate on very thin ice when it came to his land dealings in the

[1190] O'Malley, 'Runanga and Komiti', p.66.

[1191] Kou to Clarke, 22 October 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.850-851. Translation by Dr. Jane McRae, July 2006. The reference was to Wiremu Kingi Te Rangitake, whose determined opposition to the sale of tribal lands at Waitara by individuals within the community was the catalyst for the first Taranaki War in 1860 when the government pushed through with the purchase without regard to such objections.

[1192] Kou, Evidence before the Civil Commissioner at the Runanga House, 31 October 1864, BBIW 4808/3a, Arch-NZ (Akl), in Armstrong Supporting Documents, Sec.1, pp.852-853.

north. It was perhaps timely that the Crown was now planning to withdraw from the land market altogether.

Yet remarkably, some five months after the formal abolition of the Land Purchase Department in May 1865, Kemp was still purchasing lands in the Bay of Islands. Even the Native Department seemed surprised that Kemp had somehow managed to continue drawing a salary after his position had been axed.[1193] At the end of September 1865 Kemp purchased the 5720-acre Kiripaka block for the sum of just over £143.[1194] No surprise at all, however, that there should be no plan attached to the conveyance despite the reference to one in the text of the agreement: that had almost become the norm with Kemp's purchases in the north. His final purchase, completed seven months after the abolition of the Land Purchase Department, on 28 December 1865, covered four separate pieces of land within the boundaries of the dead-letter Bay of Islands Settlement Act – Pukewhau, Hikuwai, and two small wāhi tapu. The total area of just over 517 acres was purchased for the sum of £130, with the owners having previously paid for the cost of surveying the blocks themselves.[1195]

Evidently suffering from some kind of siege mentality,[1196] Kemp had continued to pay himself out of funds earlier advanced him for Crown purchasing, even though being advised that his employment as District Commissioner would cease in January

[1193] Rolleston to Kemp, 7 October 1865, MA 4/7, Arch-NZ, [docs, vol.5, pp.1624-1625].

[1194] AUC 7, LINZ, [docs, vol.22, pp.7193-7195]; Turton's Deed No.56, Province of Auckland, pp.74-75, in Berghan Supporting Papers, vol.6, pp.3490-3491.

[1195] AUC 8, LINZ, [docs, vol.22, pp.7196-7204]; Turton's Deed No.57, Province of Auckland, pp.76-77, in Berghan Supporting Papers, vol.6, pp.3490-3491; Kemp to Shortland, 17 June 1864, *Epitome*, C, p.37. Untranslated receipts accompanying the deed suggest payment was actually made in September 1864 but a more adequate deed of conveyance subsequently demanded by the Native Minister.

[1196] In January 1865 Kemp had been informed that if he could suggest a suitable alternative position, the government would gladly re-employ him. Kemp subsequently applied unsuccessfully to be appointed as Chief Judge of the Native Land Court, and attributed his failure to secure a further position at this time to an incident some two decades previously involving Walter Mantell (the Native Minister in 1865) and a group of married Māori women in which Kemp had intervened. Betraying his Protestant missionary origins, Kemp described the January 1865 letter from Mantell as 'Jesuitical & cowardly'. Although he was appointed as Civil Commissioner for the Auckland district in 1870, the five-year gap in government service later denied him a government pension, a circumstance for which he evidently continued to blame Mantell late in life. H. Halse (Acting Native Secretary) to Kemp, 12 January 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1604]; W. Rolleston to Kemp, 10 August 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1619]; Memorandum Re Mr. Kemp's Pension, n.d., GNZMSS 201, vol.63, pp.74-76, ACL, [docs, vol.11, pp.3525-3527].

1865.[1197] Some £9196 remained unaccounted for,[1198] and despite repeated requests to explain the many anomalies, Kemp was informed in November 1865 that 'the imperfect and unsatisfactory nature of the information afforded by your late letters and the great impropriety of the course admitted to have been pursued by yourself in these letters will prove a ban to your further employment unless more satisfactory explanation can be afforded than at present seems possible'.[1199] Incredibly, Kemp was informed in January 1866, in relation to a statement of accounts advanced by him, that the deeds of purchase for eight transactions completed at the Bay of Islands between 1863 and 1865 had not been received by the Native Department and was reminded that 'the Native Title to those lands can only be extinguished by regular conveyances to the Crown'.[1200] Two months later, having apparently at last received some of the deeds from Kemp, the Native Under Secretary informed him, in relation to the agreements relating to three allotments at Russell that:

> the Deeds in question appear to be executed in a very unsatisfactory manner. In one case the only witness to the signature of the Natives selling the land is yourself who were the buyer. Maps and plans are alluded to in all the deeds but none are given.
>
> The documents are called "original memorandums of conveyance" which would seem to imply that more perfect deeds were to follow.[1201]

It was a suitably shambolic end to a shambolic and appallingly documented era of Crown purchasing in the Bay of Islands, though Kemp probably had good reason for now thinking his recent transactions were being unduly singled out for unfair attention, given similar discrepancies had littered his purchasing in the area from the start with nary a word of rebuke from his superiors.

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[1197] Rolleston to Kemp, 15 December 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1630].

[1198] Rolleston to Kemp, 11 November 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1626].

[1199] Rolleston to Kemp, 14 November 1865, MA 4/7, Arch-NZ, [docs, vol.5, p.1627].

[1200] Rolleston to Kemp, 8 January 1866, MA 4/8, Arch-NZ, [docs, vol.5, p.1633].

[1201] Rolleston to Kemp, 8 March 1866, MA 4/8, Arch-NZ, [docs, vol.5, p.1636].

Yet for all of its untidiness, Kemp had succeeded in securing for the Crown many of the best lands in the Bay not already taken by old land claimants such as the Williams family. And he had managed to secure many of these blocks at extremely low rates, even by Crown standards, through the promises made by Governor Browne when renewing the alliance with northern Māori in January 1858 of new townships and general economic development in the region on the Crown part in return for agreement to transact the lands. The Crown's failure to deliver on such promises helped to ensure the promised 'real payments' for the lands were never received, though as Kemp boasted in his old-age memoirs, his purchases in the Bay of Islands had helped to deliver the Crown 'revenues equal to, if not in excess of, the average gold mine'.[1202]

[1202] H.T. Kemp, *Revised Narrative of Incidents & Events in the Early Colonizing History of New Zealand, From 1840 to 1880*, Auckland: Wilson and Horton, 1901, p.7.

# 6. Mokau (Manginangina/Takapau) Block Case Study

## 6.1 Introduction

On 28 January 1859 the 7224-acre Mokau block was purchased from Wiremu Hau and nine other members of the 'Ngatiwhiu' tribe for the sum of £240. Of all the Crown purchases conducted in Northland between 1840 and 1865, none generated more subsequent controversy – including petitions, official inquiries, occupations of the land by protesters, delegations to Parliament, and the like – than Mokau. It might therefore be assumed that the Mokau purchase had been an especially contentious one from the outset. Yet that was far from the case. As the Crown consistently argued before various inquiries, in the many issues raised by the Mokau complaints – the inadequate price paid for the block, the apparent lack of any detailed investigation into customary rights to the block prior to the deed signing, inadequate, misleading or unclear descriptions of the block boundaries, deficiencies in the deed itself, inadequate documentation of the purchase and more – Kemp had acted precisely in accordance with accepted standards at the time of the conveyance. From the Crown's perspective, therefore, Mokau was a typical transaction, reflecting general purchase policy at the time.

If that was indeed the case then it might well be asked why the Mokau purchase did generate such a level of controversy in the twentieth century, compared with other 'typical' purchases in the north which did not. Judge Frank Acheson had his own thoughts on this matter, observing that:

> This 7224 acres was not an ordinary Native block at all. It was a main watershed block facing North, South, East and West. Its giant kauri trees could look out upon the waters of the Bay of Islands on the East, to Whangaroa Harbour on the North, to Hokianga Harbour on the West and to the heart of Ngapuhi tribal territory on the South.[1203]

In Acheson's view the block, by its very location, was one in which much of Ngāpuhi could legitimately claim an interest. However, Acheson's superior, Chief Judge Shepherd, hinted at another reason why the Mokau case had attracted such interest in observing that:

> It is patent that if this particular sale can be attacked, many others might, by the same or similar tokens, be impeached – a state of affairs which cannot be contemplated with equanimity. It is neither in the interests of the State, nor of the Natives that contracts anciently entered into, whether with the Crown or private persons, should be the subject matter of endless review, particularly so, in the case of the Natives, for their minds are unsettled, and they are easily mislead by the expectation of great gains with the result that their substance is consumed in what must prove to be fruitless and abortive proceedings.[1204]

If the typical Mokau transaction was nevertheless found to be unjust, that would call into question all of the Crown's purchases in the north, encouraging others who looked upon this as a test case to bring forward further grievances with respect to other blocks. In Shepherd's view this was sufficient reason on its own to reject the claim, regardless of the merits of the case.

### 6.2 The Purchase

On the face of it, there was little out of the ordinary in terms of the purchase of the Mokau block. In fact, unlike some other purchases conducted around the same time by Kemp, it even had a plan attached to the deed and Kemp was not the sole witness to the agreement.[1205] What it did share in common with nearly all of Kemp's

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[1203] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2470].

[1204] G.P. Shepherd to Native Minister, 15 September 1941, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2466].

[1205] AUC 13, LINZ, [docs, vol.22, pp.7214-7215]; Turton Deed No.38, Province of Auckland, pp.54-55, in Berghan Supporting Papers, vol.6, pp.3468-3469.

purchases in the north was a woeful lack of documentation around vital issues such as the basis upon which the signatories to the agreement were deemed valid owners of the block and whether (and, if so, who) they were representing in signing the conveyance to the Crown. But at least the basis upon which the price for the block was arrived at is clear enough: as with all Crown purchases in the north this was simply the lowest price which the vendors could be persuaded to accept.

Kemp had been interested in purchasing the Mokau block since at least February 1856, evidently considering its acquisition an important means of improving communications between the different districts. He informed McLean at that time, when reporting the purchase of the nearby Omawake block that:

> Upon a more minute examination of the country surrounding it, I think it will be found eventually to bring into close connection the important harbours and water communication of the Bay of Islands and Whangaroa on the Eastern side, and of Hokianga on the West; more especially if I should succeed in acquiring the adjoining Blocks known as Pirau and Mokau.[1206]

Clearly, if Kemp was not already negotiating the purchase of Mokau by this time then he had targeted it for future acquisition as a matter of priority.

By February 1858, when the sum of £350 was provisionally estimated for the purchase of 'Pirau and Mokau, ten miles distant, West of proposed Township', Kemp certainly was in negotiations for the block.[1207] On 1 July 1858 he wrote again to report that 'the survey of a Block of Land known as Mokau has just been completed':

> It is one of the Blocks already reported on as under negotiation, and is estimated to contain Ten thousand (10,000) acres, chiefly forest, comprising some very fine kauri and other timber. It is situated North West of Waimate, distant ten miles, with an available road.

[1206] Kemp to McLean, 28 February 1856, AJHR, 1861, C-1, p.5, [docs, vol.12, p.3863].

[1207] Kemp to McLean, 16 February 1858, AJHR, 1861, C-1, p.24, [docs, vol.12, p.3871].

> It stands connected with blocks over which the Native title has been extinguished, and is in every other respect a desirable purchase.
>
> The Chief Wi Hau, a well known and useful servant of the Government, is the seller; and as he is anxious to assist the Government in establishing a settlement here, I beg to recommend that I may be authorized finally to conclude this purchase.[1208]

Early in October 1858 Kemp further reported that 'the price for the Mokau Block...containing by survey 7225 acres, has been fixed at the sum named in the margin (£240)'. Kemp added that the 'particulars' connected with the negotiations for the block had already been transmitted to the Chief Commissioner's office. He believed the sum named to be 'fair and reasonable, and as low as it could be made, taking the ascertained quantity and other favourable points into consideration' and sought to have the money sent to him as soon as possible if the purchase was approved.[1209] McLean informed Kemp on 20 October 1858 that the governor had approved of the purchase at the price named in Kemp's letter and the Sub-Treasurer at Russell had been instructed to advance him the amount of £240.[1210]

On 29 January 1859 Kemp wrote again to McLean to 'forward by this conveyance the original Deed of sale of a Block known as Mokau or Manginangina, executed by the Natives on the 28th instant, and for which the sum of Two hundred and forty pounds sterling (£240) has been paid into their hands, agreeably with your instructions'.[1211]

This was evidently the sum total of official correspondence with respect to the purchase of the Mokau block. It is little wonder that it left considerable room for debate more than 80 years later, when the merits of the transaction were considered at length. Taken literally, the 'particulars' Kemp had forwarded McLean included the

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[1208] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1209] Kemp to McLean, 4 October 1858, AJHR, 1861, C-1, p.30, [docs, vol.12, p.3874].

[1210] McLean to Kemp, 20 October 1858, *Epitome*, C, p.363.

[1211] Kemp to McLean, 29 January 1859, AJHR, 1861, C-1, p.34, [docs, vol.12, p.3876].

statement that Wiremu Hau was the sole owner of the 7224-acre block (or, at least, was the sole seller of it). Presumably Kemp meant that Hau was the principal chief involved in the sale, though he failed to provide any information as to whether he had conducted any investigation into customary rights to the block, whether he had consulted with others elsewhere who might have claims on the land, or indeed who Hau was representing in the transaction and the basis upon which he had been authorised to conduct the sale on behalf of others (or even if he had). Indeed, it is not apparent from any of Kemp's correspondence whether any hui had been called at any stage to discuss the sale, whether Māori had received prior notification of the survey of the block and were able to point out the boundaries of the lands to be included in the transaction, or even, at the most basic level, whether the purchase had been initiated by an offer of the land from Hau or had been started by Kemp.

None of this was unusual when it came to Crown purchasing in the north. As has been commented on throughout this report, the paucity of the Crown's own records in relation to its Northland purchases leaves much open to speculation. Whether or not allegations that Wiremu Hau was the only vendor to actually sign the Mokau deed, and that the agreement of others was fraudulently added, are true or not, the fact that the system of Crown purchasing in the north provided ample opportunity for fraud to be perpetrated must certainly call into question the integrity of the purchases as a whole. Shepherd was right to be concerned that careful scrutiny of the Mokau purchase would open up a Pandora's box that the Crown might not be able to easily close again. The standards of Crown purchasing applied in the Mokau transaction were indeed no worse than in most other purchases completed in the north in the period to 1865. Those standards were rarely better than abysmal.

### 6.3 Mokau, 1859-1935

The Mokau block was also typical of many northern Crown purchases in another respect: it was little more than a paper transaction for a lengthy period after the deed signing. For more than 40 years after 1859 local Māori continued to freely occupy and utilise the resources of the block for birding, pig-hunting, gum-digging and other purposes, seemingly without impediment from Crown officials. Māori grievances in

relation to the Mokau block purchase would lately be dismissed by one commission of inquiry on the basis that the first complaint regarding the transaction had not been made until 1902 at the very earliest. Yet that petition appears to have been prepared at about the same time that the first Ranger was appointed for the Puketi State Forest located within the block, which was subsequently transferred to the New Zealand Government Railways Department for milling purposes. In other words, the first Crown efforts to take effective possession of the block appear to have prompted an immediate response from local Māori, who – given they remained in occupation of it prior to this time – really had little to complain about previously. If possession truly is nine-tenths of the law, then local Māori had good grounds for believing they were in every practical sense the owners of Mokau until at least the early twentieth century.

Even officials were confused about what had been, at least on paper, purchased from Māori. By a proclamation dated 12 August 1863 native title over the 7224-acre Manginangina block was declared to be extinguished, with the exception of 'a Native Reserve containing 200 acres', along with a small portion owned by a settler.[1212] The reserve in question (known as Te Tarawa) had not, however, been defined on the plan attached to the 1859 deed. Instead, the text of the deed had declared that 'Two hundred acres of this land shall be granted to the Chiefs and people of the "Ngatiwhiu" Tribe, as a Homestead and Plantation for ever which is to be surveyed by us, and pointed out by Henry T. Kemp, on behalf of the Government.' Yet despite the fact that the undefined reserve had been specifically excluded in the proclamation extinguishing native title over the block, an 1876 application to the Native Land Court for investigation of title to the reserve was rejected on the basis that the Court had no jurisdiction over lands to which the native title had been extinguished.[1213]

Native title to the reserve was hence deemed to have been extinguished, even though it had not been. Had Kemp bothered to have the reserve surveyed prior to the deed signing in 1859, such a situation would have been less likely to have arisen. Instead, judging by the wording of the deed, it had been left to the signatories to the deed to

[1212] Extract from *New Zealand Gazette*, 19 August 1863, p.345, in MA 92/2, Arch-NZ, [docs, vol.7, p.2398].

[1213] Extract from Northern Minute Book 3, 16 October 1876, in MA 92/2, Arch-NZ, [docs, vol.7, p.2402].

arrange the survey of the reserve at their own expense. In fact, the survey was not completed until 1877, following a letter of support written by H.T. Kemp to S.P. Smith of the Survey Office, in which he observed that:

> In view of Government Blocks being handed over to the Waste Land Board, the Native claimants are anxious to secure "Crown Grant" for a reserve of 200 acres in the "Manginangina Block", made at time of purchase by myself. I think the application for a survey and plan has some time ago been made to your Office.[1214]

In October 1878, following the survey of the reserve, a Crown grant for 200 acres was issued to Hone Peti, Honetana, Honiana and Arena Napia, subject to the right of road being reserved to the Crown and restrictions on its sale or lease for a period of longer than 21 years except with the prior consent of the governor.[1215] Three of the grantees had been signatories to the Mokau deed, while the fourth, Arena Napia, was the son of Hare Napia who had also been a party to the 1859 transaction. Yet why the other six signatories to the deed or their successors were not also included in the grant is not at all clear. And perhaps more importantly, if the ten signatories to the 1859 Mokau deed were supposedly acting as representatives for the Te Whiu people in transacting the block with the Crown, why did the Crown grant for the reserve give outright ownership of it to four of their number, instead of appointing them as trustees to hold the land on behalf of the rest of the hapū?

In effect, the 1878 Crown grant for the reserve merely served to provide belated confirmation that the signatories to the 1859 deed had done no more than transact their own individual interests in the block. If they had been acting in a representative capacity, then the rest of the tribe were surely entitled to share in the reserve. The fact that they were legally excluded suggests instead that the Crown saw the ten chiefs who had signed the deed in 1859 as outright owners – despite the explicit statement in the deed itself that 200 acres 'shall be granted to the Chiefs and people of the

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[1214] Kemp to Smith, 24 July 1877, in MA 92/2, Arch-NZ, [docs, vol.7, p.2403]. Note: the letter is addressed simply to 'Mr. Smith', though this is almost certainly S.P. Smith.

[1215] Grant under the Crown Grants Act No.2 1862, in MA 92/2, Arch-NZ, [docs, vol.7, p.2404].

"Ngatiwhiu" Tribe, as a Homestead and Plantation for ever'. While some of the chiefs received title to the reserve, 'the people', it seems, were simply forgotten.

Judge Munro's failure to inspect the proclamation extinguishing native title over the Mokau block before dismissing the application for investigation of title to the 200-acre reserve in 1876 denied Māori the opportunity for a thorough investigation of customary claims to ownership over the reserve. And given the apparent absence of any comprehensive investigation of customary claims before the 1859 transaction it also, by implication, denied them the opportunity to revisit the question of broader rights over the larger block of 7224-acres. When these matters were considered in the twentieth century all of those involved in the 1859 transaction had long since passed away.

The Crown grant issued in 1878 was almost certainly ultra vires, since it is not apparent that any legal basis existed by which the Crown could presume to grant papatupu lands to anyone. And by the early twentieth century, when the Crown began to take steps to gain possession of the Mokau block, the reserve was in any event deemed troublesome. Thankfully, from the Crown's perspective, the 1909 Native Land Act removed all existing restrictions on the alienation of Māori lands at a stroke. In the same year the Manginangina reserve was vested in the Tai Tokerau District Maori Land Board for the purpose of sale. In 1914 the General Manager of the Railways Department, which had secured the right to mill over the remainder of the Puketi State Forest, informed the Native Under Secretary that they were also desirous of obtaining the same right over the reserve, the only access to which was through the rest of the forest, on the basis that:

> while Natives have the right to use the Manginangina Reserve the risk by fire to the surrounding forest is serious, in addition to which the route to reach the Native Reserve affords opportunities for gum climbers and gum diggers to trespass and remove gum.[1216]

[1216] E.H. Henley to Native Under Secretary, 1 May 1914, MA-MLP 1/1914/89, Arch-NZ, [docs, vol.7, p.2112].

The Railways Department therefore requested to know if 'the Reserve in question can be added to the Pukete [sic] State Forest Reserve & the right of the Natives to occupy it withdrawn, and land in some other locality allotted to them in lieu thereof'.

The option of providing land elsewhere does not even appear to have been contemplated by the Native Department for a moment, however, and instead the process of purchasing the block was commenced. On 18 July 1914 the Tai Tokerau Maori Land Board sold the 200-acre reserve to the Crown for the sum of £100, or ten shillings an acre.[1217] Not that the beneficial owners of the block were any the wiser to this fact. In November 1914, some four months after the sale, an application was lodged by the owners to have the block revested in themselves.[1218] In June 1915 solicitors acting on behalf of those with interests in the block informed the Registrar of the Tai Tokerau District Maori Land Board that the 'owners inform us on the authority of Mr. Tau Henare M.P. that this land has been handed back to the Native owners'.[1219] They were informed in reply that the block had been sold to the Crown and proclaimed Crown land in March 1915.[1220] Nearly a year after the sale, Hapeta Hau wrote to inform the Native Minister, William Herries that:

> We do not consent to this £100, but we agree if the Government would give £250 for this land and all the timber. There are 500,000 feet of Kauri and Totara timber, exclusive of Rimu, Matai, and Kahikatea.[1221]

He was also duly advised that the land had already been sold.[1222] So much, then, for the permanent homestead and plantation for the chiefs and people of Te Whiu.

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[1217] Native Under Secretary to Native Minister, 25 June 1915, MA-MLP 1/1914/89, Arch-NZ, [docs, vol.7, p.2107].

[1218] Application under Section 96 Native Land Amendment Act 1913, BAAI 11466/40c, Arch-NZ (Akl), [docs, vol.23, pp.7592-7593].

[1219] Reed and Miller to Registrar, Tokerau District Maori Land Board, 1 June 1915, BAAI 11466/40c, Arch-NZ (Akl), [docs, vol.23, p.7570].

[1220] Registrar to Reed and Miller, 10 June 1915, BAAI 11466/40c, Arch-NZ (Akl), [docs, vol.23, p.7569].

[1221] Hapeta Hau to Herries, 10 July 1915, MA-MLP 1/1914/89, Arch-NZ, [docs, vol.7, p.2105].

[1222] Herries to Hau, 28 July 1915, MA-MLP 1/1914/89, Arch-NZ, [docs, vol.7, p.2103].

Māori interests over the whole of the Mokau block, including the former reserve, had now supposedly been extinguished, even if knowledge or acceptance of this fact was in some cases still limited. In 1911 Poi Te Huriwai filed an application for investigation of title to a block named Te Takapau o Korohaere, which appears to have encompassed at least a portion of the Mokau block.[1223] The application seems to have been summarily dismissed without a formal hearing by the Native Land Court.[1224] But in 1933 the redoubtable Judge Acheson commenced hearing claims to a 110-acre block known as Motukauri, on the eastern boundary of the Mokau block.

Hone Rameka told the first hearing into this block in June 1933 that Motukauri had been 'retained as a Bird Reserve for the use of the Natives when the other portion of the land was sold in 1859'.[1225] Now that they were no longer permitted to shoot the birds in the forest, the reserve was no longer required and so the decision had been made to have the ownership ascertained so that it could be sold. He asked that the block now be vested in Punga, Tirarau and Whaeapapa, the three children of Turou, considered the founding the ancestor of Te Whiu.[1226] Rameka noted that Motukauri was the last piece of papatupu land in the district and asked that there be no dispute as to its ownership and that the case be settled 'in a friendly manner'. Acheson adjourned the case overnight to allow the claimants to settle the question and the following day Rameka informed the Court that the various claimants had unanimously agreed that the three ancestors should share the land equally.[1227] However, Tamati Arena Napia informed the Court that the Crown had taken a road a

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[1223] Application for Investigation of Title, 17 March 1911, in MA 92/2, Arch-NZ, [docs, vol.7, p.2414]; Report of the Royal Commission appointed to inquire into and report upon claims preferred by certain Maori claimants concerning the Mokau (Manginangina) Block, 8 March 1948, AJHR, 1948, G-2, p.15, [docs, vol.13, p.4506].

[1224] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.15, [docs, vol.13, p.4506].

[1225] Extract from Bay of Islands Minute Book 13, 21 June 1933, in MA 92/2, Arch-NZ, [docs, vol.7, p.2426].

[1226] Rowan Tautari, 'Report on Land Previously Owned by Te Whiu Hapu Puketotara/Puketi (Inland Bay of Islands) Registered as Part of Wai 421', (Report commissioned by the Waitangi Tribunal), June 1999, p.9.

[1227] Extract from Bay of Islands Minute Book 13, 22 June 1933, in MA 92/2, Arch-NZ, [docs, vol.7, p.2428].

chain wide through the block, reducing its area from 110 acres to 94 acres and three roods. Although they did not ask for compensation for the land taken, they did seek 'the return of the kauri trees cut down and now lying on the side of the road'. Meanwhile, just as the lists of those to be included under each ancestor were being finalised, a group of further claimants to the block arrived from Pupuke. Their lawyer informed the Court that the late arrivals 'claim on the Mokau block adjoining this area'. Keina Poata, one of the Pupuke group, also stated that his ancestors had 'reserved this area as a Pigeon and Kiwi Reserve. It was formerly part of the Mokau Block', whilst Hemi Riwhi declared that he was 'an owner in the Mokau Block'. Acheson agreed to re-open the investigation at a later date, a move evidently supported by the other owners of the block.[1228]

But when the case was reopened more than nine months later a surprise new claimant made an appearance. In January 1934 Owen Darby of the Lands Department had briefly appeared to deposit a plan of the block before the Court, which he explained sat between the original Manginangina (Mokau) Crown purchase block and an old land claim, before the case was further adjourned to allow parties times to prepare for the inaugural Waitangi commemoration. Two months later, however, when the application was reconsidered at length, Darby again appear to inform the Court that at the time he had previously deposited the plan before the Court the Crown 'was not aware of the true position of the Crown's rights, and so did not put in a claim at the first hearing or contest of the claims of the Natives'.[1229] He had now been instructed to oppose those claims, Darby added, and would be prepared to rely upon legislation allowing the Crown to direct the Chief Judge to refer the matter back to the Court if this was not acceded to in the present instance. Acheson replied that the Court objected to such a statement as being an 'implied threat' on the Crown's part, though Darby denied that it was and suggested that the Crown 'should be in no worse position than the Natives'.

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[1228] Extract from Bay of Islands Minute Book 13, 26 June 1933, in MA 92/2, Arch-NZ, [docs, vol.7, p.2432].

[1229] Extract from Northern Minute Book 65, 15 March 1934, in MA 92/2, Arch-NZ, [docs, vol.7, p.2434].

Having accordingly been granted permission to present the belated Crown case to ownership of the Motukauri block, Darby proceeded to deposit a number of plans with the Court, including the original survey plan of the Mokau block. Incredibly, the Crown now sought to rely on its own incompetence as the primary basis of its claims to ownership of the 110-acre block, with Darby suggesting that the survey of the eastern boundary of the Mokau block had not been in accordance with the boundaries as described in the 1859 deed. Darby claimed that the eastern boundary of the Mokau block ought to have adjoined the Inumia block, an old land claim block, largely on the basis of the statement in Kemp's July 1858 letter that Mokau stood 'connected with blocks over which the Native title has been extinguished'.[1230] Under questioning from Acheson, Darby agreed that both the description of the boundary contained in the deed and the plan attached to it were consistent with one another but claimed that both were inconsistent with Kemp's earlier statement. Yet as Acheson noted, the plan and description of the boundaries contained in the deed formed the basis of the Crown's rights.[1231] Somewhat bizarrely the Crown was now evidently seeking to suggest that a letter written nearly seven months before the transaction was completed should take precedence over the deed and plan in determining what land the Crown had purchased.

Darby's efforts to cross-examine some of the key claimant witnesses went little better. Hone Rameka repeated his statement at the earlier hearing that Motukauri had been set aside as a bird reserve, but claimed that the area of the block was intended to be closer to 200 acres and noted that he had been told by his ancestors of a dispute about the survey of the Mokau block, as a consequence of which the Crown 'took more land than the Natives sold' and was now seeking to get possession of the balance.[1232]

Tamati Arena Napia provided more details on this dispute. Before the 1858 survey, he informed the Court, a big tree had been chopped down for the purpose of making a

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[1230] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1231] Extract from Northern Minute Book 65, 15 March 1934, in MA 92/2, Arch-NZ, [docs, vol.7, p.2436].

[1232] Extract from Northern Minute Book 65, 15 March 1934, in MA 92/2, Arch-NZ, [docs, vol.7, p.2437].

waka. When the surveyor had gone there to mark the boundary line he had included the waka inside the Crown area, provoking protests from those who had excluded this from the transaction. On the death of Wiremu Hau, Napia's own grandfather, Hare Napia, had inherited the rights to the reserve, jealously guarding access to it, to the extent that a group of Māori from elsewhere who attempted to shoot pigeons on the block found their own horses and property muru'd when caught by the young Tamati Arena Napia, who had been appointed by his grandfather to look after the reserve. Hare Napia had been prosecuted for shooting pigeons on the reserve, but had won the case, 'as the mana over the Reserve was handed down to him from his ancestors' (though he had also been sued over the horses taken from the interlopers).[1233]

Judge Acheson somewhat predictably proceeded to throw out the Crown claim, pointing out that, beyond the 'vague reference' in Kemp's July 1858 letter to the boundaries being connected with other blocks over which native title had been extinguished, there was nothing to suggest that the Motukauri lands had been included in the Mokau sale, and considerable evidence in both the deed and accompanying plan to show that the area had been excluded. He also observed that the Crown could not claim papatupu lands except on definite proof that native title had been extinguished by way of purchase, cession, proclamation or other proper processes of law.[1234] That had not been enough to prevent the Crown from presuming to have authority to deal with the 200-acre reserve, which was also papatupu land, by way of Crown grant in 1878, as was noted earlier, though at least title to some of the Motukauri reserve had been protected from a similar fate. However, nearly ten acres of papatupu lands had already apparently been taken for roading purposes (probably illegally if the Crown already assumed it owned the block) and a further 90 acres approximately had been wrongly included in the boundaries of the 1859 Mokau purchase according to the testimony of some of those who appeared before Acheson in 1934. Not that legal ownership of the remainder was much more than fleeting. The just over 100-acre

[1233] Extract from Northern Minute Book 65, 15 March 1934, in MA 92/2, Arch-NZ, [docs, vol.7, p.2438].

[1234] Extract from Northern Minute Book 65, 15 March 1934, in MA 92/2, Arch-NZ, [docs, vol.7, p.2439].

Motukauri block was purchased by the Crown in December 1934 for the sum of £750.[1235]

### 6.4 Judge Acheson's Inquiry

The small victory which the Motukauri judgment represented over Crown claims to ownership of the block may have encouraged a more ambitious claim to Mokau itself. In August 1935 Hemi Riwhi and two others from Pupuke petitioned the Native Department, praying for Judge Acheson to be authorised by Parliament to hear their claims in connection with the Takapau block as they had spent a large amount of money in attending various Courts in connection with the land and had discovered that 'Officers of the Crown are obstructing the completion of the case by unnecessary delays'.[1236] A memorandum from the Registrar of the Native Land Court noted that the petition 'refers to part of the Manginangina Block which is Crown Land. Two applications for investigation of title are advertised for hearing at Kaikohe but cannot be proceeded with because the Chief Surveyor refuses to supply a plan for the purpose of investigation as he maintains the Crown has a valid title to the whole of the Block'.[1237] Clearly the complaints were right: Crown officials *were* obstructing the claims. No doubt they feared a result similar to Motukauri, in which the Crown had also been convinced of its title to the land but found this instead awarded to Māori. And although the authors had described their letter as a 'petition', the fact that it was not formally addressed to Parliament allowed officials to ignore the complaints.

A further petition which was sent to Parliament in the same year, signed by Hone Rameka and 25 others, was, however, less easily ignored. The petitioners sought a formal investigation into the 'unjust act' by which their lands, known as Takapau, had been wrongfully taken and included within the boundaries of the

[1235] Registrar, Tokerau District Maori Land Board, to Native Under Secretary, 5 December 1935, BAAI 11466/165f, Arch-NZ (Akl), [docs, vol.23, p.7533].

[1236] Hemi Riwhi and 2 others to Native Under Secretary, 28 August 1935, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2689-2690].

[1237] Registrar to Native Under Secretary, 16 September 1935, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2688].

Mokau-Manginangina block. They further stated 'very definitely that this land was not sold by our parents or elders'.[1238] In October 1936 the Native Affairs Committee referred the petition to the government for inquiry,[1239] though only after the Survey Department had attempted to prove that the claim was 'without any merit'.[1240]

Meanwhile, there had been a significant change of government at the end of 1935 which promised some hope for the petitioners. The Labour Party had long pledged to address Māori grievances, and Ripi Wi Hongi, who had stood as an unofficial Labour candidate in 1925 and had been involved in helping to formulate the party's Māori policies, wrote to Michael Savage, the newly-elected Labour Prime Minister, in January 1936 to congratulate him on the victory and express his satisfaction that there was now the very real prospect of giving effect to those policies. In this respect he specifically mentioned the Takapau petition and noted that:

> We are asking you whether it would be possible for you and your Ministers to enquire into this petition before Parliament sits. We are hoping that it will receive your favourable consideration so that it can become the Labour Government's first gesture to the Ngapuhi Tribe of its earnest desire to assist. This will open the eyes of the Ngapuhi people and will enable them to understand the policy of the Labour Party for in the year 1925 I endeavoured to persuade them to support the Labour Party. Because they did not understand it only 700 votes were cast for me. As the Labour Party is now in power, I am very anxious that you authorise a plan of the said Takapau Block to be made and an enquiry by the Native Land Court to be held.[1241]

[1238] Petition No.158/1935, MA 92/2, Arch-NZ, [docs, vol.7, pp.2368-2369].

[1239] Report on the Petition of Hone Rameka and 25 others, 13 October 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2670].

[1240] Extract from memorandum from the Chief Surveyor relative to Petition No.158/1935, 2 June 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2677-2680].

[1241] Ripi Wi Hongi 'and Ngapuhi' to M.J. Savage, 6 January 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2684-2685].

Savage replied that he was unable to comply with the request to deal with the petition prior to Parliament sitting,[1242] and informed a lawyer representing the petitioners in September 1936 that further action would need to await the report of the Native Affairs Committee.[1243] The lawyer in question, Hall Skelton, had given the Crown a taste of things to come in suggesting that fraud, an unconscionable payment, and ongoing Māori occupation were all involved in the purchase of the Mokau block. His clients sought to have title to the block investigated before the Native Land Court but had been informed by Judge Acheson that the government had instructed the Judge not to hear any application for investigation of title without their prior consent. All the petitioners now asked for, he added, was that their application should be investigated in the usual manner.[1244]

In effect, all that the claimants to the Mokau block sought was for due legal process to be allowed to operate free of impediment from the Crown. Yet the government's response to the report of the Native Affairs Committee was hardly encouraging. Less than a fortnight after receiving the report, the Native Under Secretary had recommended that no action be taken on the petition, as the Survey Department had found it to be without merit. Frank Langstone, the Acting Native Minister, concurring in this recommendation, ordered that no further action be taken on the petition.[1245]

Yet it soon became apparent that the heads-in-sand approach was not going to make the grievance disappear. In February 1937 some of the Mokau claimants met with Prime Minister Savage in Auckland, at which time a further petition was presented on behalf of a committee 'representing the owners' of the Manginangina block, seeking a judicial inquiry into their claims on the block as against those of the Crown. The petitioners again repeated their allegation that the Judge of the Native Land Court had

[1242] Savage to Ripi Wi Hongi, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2683].

[1243] Savage to A. Hall Skelton, 17 September 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2674].

[1244] Hall Skelton to Savage, 3 September 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2671-2672].

[1245] Langstone, minute, 28 October 1936, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2669].

been instructed not to hear any application of title without prior consent from the government and asked that this now be given so that they could file a further application for investigation of title to the block.[1246] Yet given Frank Acheson, the Judge for the Tai Tokerau district, was regarded as something as a loose cannon among other officials, with his radical notions that the Treaty of Waitangi should be taken legal cognisance of,[1247] perhaps the simple step of allowing the block to be investigated by the Native Land Court free from impediment by the Crown was regarded as too risky. Instead, the 1935 petition was included among a number of matters referred to the Native Land Court for inquiry under section 16 of the Native Purposes Act of 1937. That way, at least, Acheson would be limited to issuing recommendations on the merits of the claim and would not be in a position to issue title for the 7224-acre block to Māori.

Judge Acheson opened his inquiry into the petition at Kaikohe on 17 January 1939 and adjourned the case the following day for final legal arguments, which were heard in Auckland in June 1939.[1248] It is unclear when Acheson completed his undated report into the petition, though remarkably it was not until September 1941 that Chief Judge Shepherd forwarded this to the Native Minister.[1249] Two separate groups of claimants had appeared to present evidence before the Court, one led by Tamati Arena Napia and represented by Hall Skelton, and another being 'the Hone Rameka section', represented by E.C. Blomfield. Vincent Meredith, the Auckland Crown Solicitor,

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[1246] T.A. Napia and Wi [?] Anaru Hekeretai to Savage, 24 February 1937, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2662-2663].

[1247] John Acheson and Richard Boast, 'Acheson, Frank Oswald Victor 1887-1948', DNZB, vol.4, pp.1-3.

[1248] Registrar to Native Under Secretary, 13 September 1939, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2653]; Bay of Islands Minute Book 17, [docs, vol.24, pp.8329-8360].

[1249] Shepherd had been appointed Chief Judge in March 1941, despite having less than three years' experience as a Judge (by contrast, Acheson had served on the bench of the Native Land Court for over 21 years). Acheson's biographer, John Acheson (his great-nephew), has suggested that Shepherd acted as the spearhead of a campaign to remove Acheson from office, which was ultimately successful when he was forced to take early retirement at the end of 1943. Ironically, Shepherd himself would also retire early just five years later, in 1948, though under rather more dubious circumstances. A routine audit revealed that Shepherd had been privately dealing in Māori land, contrary to all guidelines. Despite a Public Service Commission finding that 'Shepherd's part in the transactions was reprehensible', he was allowed to quietly slip into retirement before his conduct could be made the subject of a public inquiry. John Acheson, [Biography of F.O.V. Acheson, unpublished manuscript], n.d., chs.16-17, passim.

represented the Crown. The latter was assisted by Darby, who had just a few years earlier failed to convince Acheson of the Crown's title to the Motukauri reserve.

The report, when finally released in 1941, certainly did not pull any punches. Summing up the evidence presented before him, Judge Acheson observed that:

> The Court found the Petitioners' case to be weak on technical and legal issues but strong on the moral issues involved. The Court found the Crown case to be strong on the technical and legal issues, but weak on the moral issues involved. The protection guaranteed by the Treaty of Waitangi to Maori tribes, chiefs, families and individuals in respect of their lands seems to have been overlooked by the Crown's officers participating in the negotiations for the purchase of the land in question. An otherwise praiseworthy zeal to protect the Queen's and the Nation's purse seems to have thrown into the background and even entirely submerged the Crown officers' collateral duty to protect the Queen's and the Nation's Honour. So 7224 acres comprising probably the lordliest Kauri Forest...in New Zealand was bought for a pittance (£240, or 8d an acre) from a few chiefs who by no stretch of the imagination could, in Maori custom, have been the sole and true owners.[1250]

A 'grave injustice' had been committed in the name of the Crown, he added, though he also believed that various chiefs who had participated in the original Mokau transaction, and of several generations following, were also 'directly culpable for their failure to safeguard and uphold the rights of their tribesmen', and considered that the 'burden of that injustice' and neglect should be borne both by the Crown and by Māori.[1251]

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[1250] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2467]. Emphasis in original.

[1251] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2467].

In reaching this conclusion, Acheson considered the various matters placed before him under several headings. The petitioners' case was 'extremely prejudiced' by the long delay before any claims had been advanced, in his view, though he also considered that 'British Justice will not preclude a reasonable measure of redress if other considerations justify it'. He evidently failed to link this delay to the fact, as he observed elsewhere in his report, that active Crown control of the forest had 'remained in abeyance for over forty years'. Indeed, Acheson observed that no evidence had been offered the Court of effective Crown occupation of the block for the 40 years following 1859 and nor had any explanation for the absence of occupation been offered, but thought it 'possible that the Lands Department itself doubted the efficacy of a sale by Ngatiwhiu alone for a mere £240 as covering the purchase of the whole 7224 acres'.[1252] He also noted that the Crown had been 'curiously silent on this point, thus opening up the possibility that effluxion of time and the absence of Native claims strengthened the Crown claim to the whole area'. What he failed to note, however, was the obvious connection between the absence of effective Crown occupation and the absence of claims.

Judge Acheson also thought that Māori occupation of the block since 1859 had probably been limited to the 200-acre reserve 'and to pigeon-shooting and the bleeding of kauri trees for gum'. He considered that the latter two activities 'could be explained by weak forest control prior to 1900, and therefore were not necessarily inconsistent with Crown ownership' and rejected claimant assertions that the whole 7224 acres had been a pigeon reserve from 1859 onwards, 'however it may have been regarded in olden times'.[1253] But if the whole of the Mokau block had always been used as a pigeon reserve and continued to be after 1859 then surely that would have been even less inconsistent with ongoing Māori ownership. And if it had taken more than 40 years for the Crown to establish effective occupation then, how, exactly were Māori expected to know that the land had been sold. One could turn Judge Acheson's argument on its head and suggest that the lengthy delay on the Crown part meant any claims to the land it once had had grown cold meanwhile.

[1252] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2472].

[1253] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2472].

On other issues Acheson also found against the claimant allegations, not because of any evidence that they were positively wrong, but simply due to the lack of compelling evidence of any sort which either could prove or disprove the arguments made. Suggestions that some of the boundary points included within the survey were in the wrong place and had misled Māori into thinking they were transacting a different area were, for example, rejected on the basis that some 80 years after the survey it was impossible to prove that the survey had been in error. Likewise, Acheson agreed that the execution and witnessing of the deed 'were certainly irregular and even seriously defective according to conveyancying standards in force at the time for private purchases' but rejected grievances associated with this on the basis that it had not been proven that the Crown was bound by such standards during the period in which pre-emption remained in force. He deemed it 'far too late now to raise any questions as to the method of execution of the Deed'.[1254]

Judge Acheson was less equivocal on other matters, however, including the name given to the block ('Mokau' on the deed itself and 'Mokau and Manginangina' on the plan) considering the use of the former term as applying to the whole block one that was seriously likely to have misled other tribes as to the extent of the area being purchased. As noted earlier, he considered Mokau was not an ordinary block at all, but a main watershed one facing four separate directions. The usual practice in such a circumstance, Acheson added, would be for the hapū to claim the right to all the land on its side up to the top of the watershed and give a name to this area. He thought it 'incredible that Wi Hau and other Ngatiwhiu chiefs should have seriously claimed the right to name and to sell the portions on the other three sides of the watershed', and considered it more likely that they gave the name 'Mokau' to their own side of the watershed, observing that:

> The Court cannot believe that Wi Hau or any other Ngatiwhiu chief would have seriously claimed the right to name or to sell the Hokianga side dominated by the mana of famous Tamati Waaka Nene, or the Whangaroa side where Hongi's kinsmen held sway, or the southern side looking towards

[1254] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2472].

> Okaihau and Kaikohe. Under these circumstances, the name "Mokau" would convey nothing to the other sub-tribes interested in the 7224 acres. "Mokau" would be Ngatiwhiu's land. If Wi Hau and others sold Ngatiwhiu's land called "Mokau", that would be their concern. To this extent therefore, the name "Mokau" must have been quite misleading to others than Ngatiwhiu. It could have given them no warning of the sale of their portions to the Crown. Probably this helps to explain the great interest displayed by all Ngapuhi in this Inquiry. The Ngatiwhiu are only a fraction of those now claiming to be entitled.[1255]

Acheson's general point concerning the looseness with which block names were bandied about by land purchase officials and the potential for serious confusion which this could cause to different hapū would appear a valid one, though his more specific points regarding Mokau would appear to be based more on deductions from general principles of customary tenure than anything else. Regardless of whether or not Acheson was right about the area being one in which the rights of at least four different groups intersected, his whole argument appears to have been premised on the assumption that the name 'Mokau' had been given to the place by Te Whiu and was used exclusively to designate that part of the 7224 acres over which they claimed customary interests. Yet empirical evidence on both points would appear to be lacking in his report. And regardless of what name was given a block, all parties with claims to the area could be alerted to the fact that the Crown was in negotiation for it by the simple expedient of purchase officers taking time to discuss proposed transactions with a wide circle of neighbouring hapū.

As Acheson noted, it followed from the above that 'the utmost care and the fullest inquiry on the part of the Crown's officers were called for in 1858-59 before they could reasonably accept the signatories as the persons entitled to sell the whole 7,224 acres to the Crown':

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[1255] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2470].

> If the Ngatiwhiu chiefs led Mr. Kemp to believe that Ngatiwhiu owned the whole 7224 acres, this would not be reasonable proof that Ngatiwhiu did in fact own the whole 7224 acres. What enquiries did Mr. Kemp make to satisfy himself that he was dealing with the sole and true owners? The records are silent. There is no evidence that he visited Pupuke in the North, Okaihau or Utakura in the West, Kaikohe or Ohaewai in the South – to enquire of other sub-tribes of Ngapuhi as to whether they claimed the sides of the forest watershed which faced their way. The written record shows clearly that Mr. Kemp regarded Wi Hau, "a useful servant of the Government," as "the seller".[1256]

That was, indeed, as was noted earlier, the full extent of Kemp's reported 'investigation' into customary interests in the Mokau block. Acheson wondered why others had joined in the sale, observing that Tautahi, 'a well-known Ngatiwai chief from far distant Whangaruru...must have chuckled at the idea of being asked to sell another tribe's land'. Another vendor had come from 'far-off Whirinaki' in the Hokianga district, and a third had used the name 'Hongi', which no one had been allowed to use on its own since the death of Hongi Hika in the 1820s. While some signatories had been genuine Te Whiu, according to Acheson, neither they nor Wi Hau could speak for other tribes interested in the lands. With respect to Te Whiu, Acheson noted that the Treaty of Waitangi had expressly guaranteed the rights of individuals and families, as well as the rights of tribes and chiefs. In the matter of the Mokau sale, 'the Crown's representatives did not protect the rights of the families of Ngatiwhiu', but nor had their own chiefs and in Acheson's view their descendants could not now deny that their chiefs had sold the land. All that Te Whiu could now legitimately claim was that the price paid to the chiefs had been unfair, though even that claim was adversely affected by the lengthy delay in claiming redress.[1257]

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[1256] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, pp.2470-2471].

[1257] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2471].

With respect to the claims of other groups on the block, Judge Acheson asserted that 'Mr. Kemp had no apparent justification for regarding Ngatiwhiu and Wi Hau as the rightful owners of the whole 7224 acres'. It was, he believed, 'the undue readiness of land purchasing agents to accept any vendors' assurances of ownership at their face value which led to so many abuses prior to and during the period in question'. As Acheson plainly put it:

> Prior to 1862 purchasing agents for the Crown seem to have been a law unto themselves, bound neither by the ordinary law as to Conveyancing and compliance with the Statute of Frauds, nor by the terms of the Treaty of Waitangi.[1258]

In his view, though, the 'crux' of the whole debate concerning the Mokau transaction was the price paid for the block. On this question Judge Acheson declared that:

> The Court says firmly and definitely that the price was unconscionable and even outrageous, but that the Crown's officers and the Government of the day were not the only ones to blame. Wi Hau and the others who assisted him in this unconscionable bargain betrayed the interests of their own sub-tribe Ngatiwhiu and of its individuals as well as the interests of other sub-tribes which, in the opinion of the Court must have had rights in the portions of the 7224 acres on the other three sides of the watershed.[1259]

Yet although Acheson portrayed Wiremu Hau as an experienced land seller, all of the surrounding blocks in which the chief was listed as participating in the alienation of were either old land claims or Native Land Court blocks. Wiremu Hau was not, in other words, experienced when it came to transacting blocks with the Crown in the pre-1865 period. Acheson also evidently failed to pick up on the significance of Kemp's statement that Hau had been 'anxious to assist the Government in

[1258] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2472].

[1259] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2473].

establishing a settlement here'.[1260] Hau had, like many other northern chiefs at this time, transacted lands with the Crown at a discounted rate in the expectation of receiving various long-term benefits under the Crown's promised investment in the north through the Bay of Islands Settlement Act of 1858 and related developments. He could no more have predicted the Crown's failure to deliver on these promises than could any of the other northern chiefs similarly seduced by the promises made by Governor Browne, Kemp and other government officials. In short, Acheson was undoubtedly being unduly harsh in criticising Wiremu Hau and the other signatories to the deed for accepting such a low price for the Mokau block.

Yet the non-receipt of these promised 'real payments' meant that monetary compensation was all that the signatories to the Mokau deed and other Crown purchases in the north received. The price paid per acre for such blocks thus assumed an increased importance if this was to be the only payment received, as turned out to be the case. In relation to the heavily-forested Mokau block the value of the kauri trees on the block was central to the issue. Judge Acheson noted with respect to this question that no official figures as to the quantity of kauri and other timber on the block had been provided by the Crown, though he was in little doubt that such information was readily available on State Forest files. Hall Skelton had, however, quoted £5,000,000 as the probable contemporary value of the sawn timber on the block, and Acheson rejected Crown arguments that Mokau was a wilderness in 1859 and the timber on it of little real value.[1261]

Acheson accordingly recommended that those portions of millable timber on the block which were not required for scenery preservation purposes should be milled commercially and 'a liberal percentage of the nett proceeds be paid over to the Tokerau District Maori Land Board' as a trust fund out of which the petitioners' legal and other costs could be covered, with the balance to be applied over time to 'such community or tribal purposes' as directed by the Native Land Court with the approval of the tribes. He did not see fit to recommend the return of any of the lands,

[1260] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1261] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, pp.2473-2474].

considering that 'the Natives were seriously blameworthy for allowing eighty years to pass before bringing on their case against the Crown, and also because the Court feels that Wi Hau, Hare Napia, Arena Napia and other Ngatiwhiu leaders were parties to the injustice done to the real owners of the land'. Acheson deemed it imperative that 'the unconscionable bargain made between the Crown's agents and certain Native chiefs in 1859 should be rectified even at this late stage lest the honour of the Crown should be besmirched'.[1262]

For all of its considerable flaws, Judge Acheson's report had at least provided vindication for some of the key grievances advanced by the petitioners. The same could not be said about Chief Judge Shepherd's covering letter. As noted earlier, Shepherd was concerned that if the Mokau purchase could be attacked, Māori would be encouraged to enter into 'fruitless and abortive proceedings' to overturn other 'contracts anciently entered into', which would be, he thought, neither in their interests nor those of the Crown. At least he was correct in stating that there was 'no suggestion that the Mokau purchase was conducted otherwise than after the usual manner'. Indeed it was, though if Mokau had been a typical Crown purchase but could nevertheless be found to have resulted in major injustices to the owners of the block, then it logically followed that nearly all of the other pre-1865 Crown purchases in Northland could likewise be attacked on legitimate grounds. As noted earlier, this appears to have been Shepherd's primary concern. Mokau sat perched atop a very fragile house of cards. And its collapse would threaten Crown titles throughout Northland.

Shepherd recited the now familiar slept-on-rights argument in suggesting that 'if there be any foundation to the claim now being pressed that other sections of the Natives were entitled to an interest in the land, their acquiescence, and that of their descendants, in the status quo for so inordinate a length of time must deprive the latter of a right to any measure of relief under that head'.[1263] Yet if the block remained in effective Māori occupation until the early twentieth century then to the extent that

[1262] Report Pursuant to Section 16 of the Native Purposes Act 1937 into Petition No.158/1935 of Hone Rameka Relative to the Takapau Block, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2475].

[1263] Shepherd to Native Minister, 15 September 1941, Le 1/1941/202, Arch-NZ, [docs, vol.8, pp.2454-2455].

such groups existed they may not have suffered any actual prejudice in terms of accessing the block and its resources until that time.

Shepherd's suggestion that there was no market for kauri in 1859 was equally unconvincing. If that was the case, why had Kemp described the block in July 1858 as containing 'some very fine kauri and other timber'?[1264] The Chief Judge commented in relation to this statement that it could therefore be 'presumed that in fixing the price, account of that fact, to the extent that the existing circumstances then required, was taken by the authorities'. To suggest otherwise, he added, was to 'impute improper or dishonest motives to the Purchase Commissioners and even to the Government itself – an untenable proposition'.[1265] It was unthinkable that Crown agents could have acted improperly in purchasing Māori lands, ipso facto they could not have done so. The dizzy circularity of such a line of argument was far from compelling, though when all else failed there was always the notorious *Wi Parata v. The Bishop of Wellington* judgment to fall back on. Cessions of land to the Crown were to be regarded as acts of state which were not examinable in any Court of law, Shepherd asserted. The Privy Council had rejected this position at least twice prior to 1941, despite the best efforts of the local judiciary to uphold a line described by noted legal scholar Paul McHugh as 'an incredible position, since it alleged that as against some of its subjects (not in rebellion) the Crown could perform an expropriatory act of state'.[1266]

The Chief Judge's thoroughly disingenuous covering letter, with its final statement that he had no recommendation to make in the matter, was doubtless a convenient one for officials who had never seen any merit in the grievances related to Mokau and simply hoped the whole issue would disappear. But Acheson's report had provided enough grounds for the claimants to hope that their complaints in relation to Mokau might eventually be addressed by the Crown. And by the time that the report was released in 1941 they had a further compelling basis to demand action from the

[1264] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1265] Shepherd to Native Minister, 15 September 1941, Le 1/1941/202, Arch-NZ, [docs, vol.8, p.2455].

[1266] Paul McHugh, *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi*, Auckland: Oxford University Press, 1991, p.120.

government, given the substantial involvement of northern Māori in the 28th Māori Battalion which was then taking such a prominent role in the Second World War.

### 6.5 Further Petitions

Judge Acheson's report, along with Shepherd's contrary view, were referred back to the government by the Native Affairs Committee in October 1941.[1267] In January 1942 Shepherd's findings were, predictably enough, relied upon to justify no further action being taken with respect to the 1935 petition.[1268] But just before government officials got too comfortable in resuming their heads-in-sand positions, Tamati Napia wrote to the Minister of Forestry in August 1942, asking that the payment be made for the Takapau case or he would instruct his men to work the timber on the block.[1269] Napia was informed in response that the 'Government does not think that the Natives can now lay a claim that Takapau was not sold to the Crown, and it has decided not to do anything about the petition'. 'The land belongs to the Crown', Napia was warned, 'and no one must touch the timber on it without the authority of the Director of Forestry'.[1270] Tamati Napia, though, requested further information as to 'the alleged sale of my interest to the Crown' and repeated his intention of obtaining timber from the block as soon as possible'.[1271]

Meanwhile, the following year Napia and 48 others filed a further petition with respect to the Mokau block, repeating some of the key findings of Acheson's inquiry, including the statement that the price paid for the land was 'unconscionable and even outrageous' and the lack of effective Crown occupation of the block for more than 40

[1267] Report of the Native Affairs Committee on Petition No.158/1935, 1 October 1941, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2637].

[1268] Native Under Secretary to Native Minister (and minutes thereon), 21 January 1942, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2638].

[1269] Napia to Minister of Forestry, 25 August 1942, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2631, 2636].

[1270] Native Minister to Napia, 25 September 1942, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2634-2635].

[1271] Napia to Native Minister, 8 September 1942, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2627-2629]. This letter appears to have been mis-dated, and was probably written on 8 October 1942. It was received by the Native Department on 12 October 1942.

years after 1859. The whole transaction, the petitioners stated, was 'tarnished with acts contrary to the spirit of the principles of natural justice and the Native descendants until more recent years were unaware of the alleged illegalities and the unconscionable bargain made by Wi Hau a Government servant at the time on behalf of the then owners and their children'. The report of Judge Acheson, it was asserted, had found that the Crown had 'failed to prove the sole right of Wi Hau (with or without the other signatories) to own and sell the said block of land in question', while the '200 acres of Kauriless reserve was a trivial sop wholly inequitable and unjust to the remaining owners and their children'. As for the findings of Chief Judge Shepherd, these were dismissed as 'a category of special pleading to overcome the direct findings of His Honour Mr. Acheson, who had the advantage of hearing the witnesses, and only transciently [sic] deals with vital and proved facts'.[1272]

The problem with forwarding petitions to Parliament, however, was that they were invariably referred to the government for report, which then influenced the findings of the Native Affairs Committee. This is exactly what happened with this latest Mokau petition, which was forwarded to the government in the usual manner, providing an opportunity for Chief Judge Shepherd's earlier findings to be hauled out once again. Echoing Shepherd, the Native Affairs Committee declined to make any recommendations on the 1943 petition.[1273]

In July 1944 the Reverend Keina Poata of Pupuke again inquired as to what was happening with the Takapau block, informing the Native Minister, Rex Mason, that 'there was a lot of timber on this block and if the position was finalised the timber could be used to relieve the housing shortage throughout the Northern district'.[1274] The Reverend Poata was informed in response that the government was of the view that 'the claims of the petitioners do not warrant the return to them of a portion of the

[1272] Petition of Tamati Arena Napia and 48 others, Petition No.66/1943, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2621-2622].

[1273] Report of the Native Affairs Committee on Petition No.66/1943, 10 August 1943, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2618].

[1274] H.R.G. Mason to Native Under Secretary, 31 July 1944, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2613].

land from which timber could be extracted for housing purposes in the North'.[1275] Chief Judge Shepherd's 1941 refutation of the report of Judge Acheson was continuing to prove very useful for the government. But a further petition to Parliament in 1944, signed by Tamati Mahia and 140 others, again sought to challenge Shepherd's rejection of their claims, asserting that this had been done 'against the weight of evidence', and again noting Acheson's favourable findings and recommendations in respect of the fuller inquiry he had undertaken.[1276]

This time, rather than simply decline to make any recommendation, the Native Affairs Committee referred the petition to the government for consideration.[1277] According to the Native Under Secretary, '[t]he Committee's idea in referring this petition to the Government was that the Government might consider including it among the matters to be inquired into by a Commission if and when appointed'. Beyond noting it for this purpose, he recommended, 'nothing seems to be required'.[1278] A separate petition of the same year had urged that all outstanding claims from Northland (many of them relating to the so-called 'surplus lands') might be referred to a commission of inquiry for investigation, and Mason was now evidently of the view that it 'might be as well to have the [Mokau] matter brought up when the schedule of the Commission is being considered'.[1279]

In February 1946 Hall Skelton, who was continuing to represent at least some of the claimants to the block, wrote to Walter Nash, the Finance Minister, again urging prompt action in addressing the grievances in relation to the block.[1280] Mason

[1275] Native Minister to Poata, 24 August 1944, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2611].

[1276] Petition of Tamati Mahia and 140 others, Petition No.107/1944, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2610].

[1277] Report of the Native Affairs Committee on Petition No.107/1944, 30 November 1944, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2605].

[1278] Native Under Secretary, minute, 11 December 1944, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2604].

[1279] Cabinet minute, 11 March 1945, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2603].

[1280] Hall Skelton to Nash, 8 February 1946, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2598].

informed Hall Skelton in May 1946 that the Mokau case had been 'noted' for possible reference to any commission of inquiry that might be set up, but added that the matters to be investigated by any inquiry had yet to be finally decided and he did not wish to be taken as holding out any definite promise that the Mokau claim would be brought before the commission.[1281]

Tamati Arena Napia, meanwhile, had evidently had enough of all the talk of a commission and simply wanted the lands back. In September 1946 he informed the Native Minister that he objected to the setting up of a commission 'to handle cases regarding land sold by the Maoris to the Crown especially the confiscated lands of my ancestors now Crown land'. The land in question, Takapau, had already been dealt with by Judge Acheson in the Native Land Court, he added, and Napia was now 'going North to fell the trees which I think is mine'.[1282] As M.R. Jones of the Native Department observed, it was not apparent whether Napia's statement constituted a threat or a promise.[1283] Either way, Napia received the now familiar warning that 'no one must touch the timber on Takapau unless he has proper authority from the Crown', and was further informed that, with a commission having already been appointed to investigate the 'surplus lands' issue in the north, any further inquiry into the Mokau grievances would have to wait until the former issue had been dealt with.[1284]

In March 1947 Napia, along with Hone Heke Rankin, met with the Prime Minister and Native Minister, Peter Fraser, in Kaikohe. Fraser told the pair that the Takapau claim probably could not be referred to the Surplus Lands Commission, but might be referred to a separate commission to deal with other similar claims. Napia, though, informed the Prime Minister that Takapau had already been inquired into and he

[1281] Mason to Hall Skelton, 27 May 1946, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2596].

[1282] Napia to Native Minister, 23 September 1946, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2592-2593, 2595].

[1283] M.R. Jones, minute, 30 September 1946, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2589].

[1284] Native Minister to Napia, 10 November 1946, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2588, 2591].

could not see why it was necessary for it be investigated by another commission. His great wish was that the grievance should be settled before he passed away.[1285] In April Fraser similarly wrote in relation to a further inquiry regarding the block that the Mokau case could not be dealt with by the commission already appointed to investigate the 'surplus lands' question, but would be considered for inclusion in a separate inquiry at a later date.[1286]

It was now at least six years since Acheson had upheld the grievances in relation to the Mokau purchase and still the Crown continued to refuse to accept his findings, instead relying on Shepherd's flimsy contradiction of the report to consistently reject Māori claims to the Puketi State Forest. The Crown had not even committed to further inquiry into the grievances, instead issuing vague promises that the case 'might' be referred to a possible commission to be set up after the Surplus Lands Commission had finished its inquiries. Patience was clearly beginning to wear thin as the hollow promises continued to be repeated. And the general climate was no doubt further disturbed by the contentious process of retrospectively approving the unauthorised taking of timber from the nearby (and Te Whiu-owned) Puketotara block which was also underway at this time.[1287] In March 1947 the Commissioner of State Forests, C.F. Skinner, met with Hone Heke Rankin and Lou Parore to discuss claims on the Puketi State Forest and was asked that the investigation into these should be expedited. Skinner later noted that 'my interviewers said the owners were upset and were talking of reprisals such as cutting timber against the law in Takapau Blocks and other Blocks'.[1288]

Warnings of this kind had been heard before but this time the Mokau claimants evidently meant business. On 9 May 1947 the *Northern Advocate* reported that a party of 10 to 12 Māori, operating on 'a well-organised plan', had 'gone into the Puketi

[1285] Notes of representations made to the Native Minister, Kaikohe, 24 March 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2585]. Note: The speaker is identified as 'Tame Arena'. I have assumed that this was Tamati Arena Napia.

[1286] Fraser to Tamati Peehikuru, 17 April 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2583].
[1287] Tautari, pp.26-27.

[1288] C.F. Skinner to Prime Minister, 13 May 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2563-2564].

State Forest and begun cutting heavy kauri to provide timber for Maori housing'. According to this report, the action had 'been taken at the instigation of a Dominion-wide committee' which had gathered support from Māori throughout the North Island over more than a year for the claim to the forest. Meetings had been held throughout Northland and the committee finally authorised the cuttings to proceed. Stating the obvious, the newspaper noted that the action was possibly 'an endeavour to force a decision on their claim for ownership of the forest'. Numerous representations had been made on the subject over the years, it was added, and Fraser had reportedly been informed during his recent visit to the north 'that if he did not do something quickly about Puketi, the Maoris would'. That the whole affair was a well organised one, the newspaper alleged, was evident from the fact that a prominent Auckland solicitor had been engaged by the committee to provide legal advice on the felling. Crown officials may have been coy as to the value of the timber in the Puketi State Forest, but according to the *Advocate* it was widely known that it was a much superior milling forest to Waipoua. Something in the order of 10,000 to 12,000 feet of timber to the acre was considered a good milling proposition, it added, but in Puketi some areas were estimated to contained no less than 1,000,000 feet per acre.[1289]

On 12 May 1947 the local Ranger, E.R. Blake, reported that he had visited the forest three days earlier along with the local constable and found the fellings being led and directed by Tamati Arena Napia, who declared that 'application had been made for a hearing of their claim and that, as nothing had been done about the matter, they were taking this action to bring matters to a head'. Blake also noted that the move was a well-organised one, which followed a series of meetings throughout Northland. Napia was 'very hostile', when first confronted, he noted, and initially refused to stop operations and objected to the felled trees being branded as required under the Forestry Act, declaring that 'if this were done he would place gangs of Ngapuhi bushmen throughout the forest who would fell the best kauri trees until forcibly stopped; that if he were arrested, he offered himself for arrest, another leader was ready to take his place'. Blake reported that he had eventually managed to persuade the group to agree to a 'truce' but only for a period of 'three days, a week at the

[1289] *Northern Advocate*, 9 May 1947, in MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2571].

most', in order to allow time for the operations to be reported to government.[1290] The message was clear enough: a resumption of the usual Crown prevarication on the Mokau claims would result in further trees being felled in the Puketi State Forest, an action which appears to have had widespread support amongst northern Māori and might have resulted in serious disturbances if the government sought to forcibly end the proceedings.

The Kaikohe Welfare Officer, who had also travelled to Puketi with Blake and the constable, noted (contrary to the ranger's report) that the party had been friendly towards them. Napia had argued that until the question of ownership of the forest was resolved he had every right to work the area, and pointed out that to accept state stumping of the felled trees 'was tantamount to his admittance of state ownership'. The whole affair had been amicably settled by agreement not to stamp the timber and to await a response to their actions from Wellington. But the Welfare Officer noted that the Mokau claim was 'constantly being discussed on the Maraes' and added that 'very little can be done unless the Government, if it thought fit can see its way clear to make an enquiry and to effect an early settlement to this dispute'.[1291]

The Commissioner of State Forests had informed the Prime Minister just a few days after the fellings had been reported that the Auckland Crown Solicitor had been instructed to deal with the matter, and noted that 'no doubt some prosecutions will be inevitable'.[1292] Peter Fraser, though, evidently discussed the whole Mokau question with Hone Heke Rankin on 6 June 1947, following which he informed the Commissioner of State Forests that he proposed holding inquiries into the case for a further investigation. Meanwhile, he requested that any prosecutions pending for unlawful felling of timber in the Puketi State Forest should be stayed.[1293]

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[1290] E.R. Blake (District Ranger) to Conservator of Forests, Auckland, 12 May 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2568-2569].

[1291] H. Rogers (Kaikohe Welfare Officer) to Controller, Maori Welfare Department, 16 May 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2575-2576].

[1292] C.F. Skinner to Prime Minister, 14 May 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2560].

[1293] Fraser to Commissioner of State Forests, 11 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2562].

Fraser met with Rankin and Waimate Anaru in Wellington on 24 June 1947. Anaru handed the Prime Minister a further petition on the Mokau case (which he signed 'na Ngapuhi nui tonu'), again outlining Acheson's inquiry into their claims, Shepherd's rejection of his findings and the importance of the case to the whole of Ngāpuhi. 'The Waikato[,] Ngaitahu[,] and Taranaki Tribes have been granted their claims and also the Te Arawa people', he observed, but 'this Tribe has been loyal to you since you entered Parliament and has considered that this bush will supply timber to build houses for us and our boys who returned from the war'.[1294] Fraser repeated his earlier statements that Mokau could not be investigated by the Surplus Lands Commission but might be considered separately by another commission of inquiry to be appointed. Meanwhile, any further felling of timber on the block could only prejudice the case and must be stopped.[1295]

The Prime Minister had told Anaru to come back the following day before he left to return north and Fraser 'would let him know what could be done'. Earlier, Fraser had informed the Native Under Secretary that he was 'anxious to have this matter disposed of as soon as possible'.[1296] On 25 June 1947 the Prime Minister issued urgent instructions (ironically to Shepherd, the Under Secretary) 'for the immediate investigation of the purchase by the Crown of the Takapau Block' and asked him to ascertain whether the Surplus Lands Commission could be utilised for these purposes.[1297]

Seven felled kauri trees had achieved what nearly seven years of lobbying and petitioning the government had failed to do. Now that the government had committed itself to further inquiry into the Mokau purchase, Hall Skelton (who appears to have

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[1294] Waimate Anaru to Fraser, 24 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2553-2556].

[1295] Notes of Interview with the Prime Minister, 24 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2551-2552].

[1296] Fraser, minute, 9 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2560].

[1297] Fraser to Native Under Secretary, 25 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2550].

been the prominent Auckland lawyer linked with the tree fellings) set about influencing its terms of reference. On 27 June 1947 he informed the Prime Minister that it was agreed that the retired Chief Justice, Sir Michael Myers, should head the commission of inquiry into the claim. Hall Skelton further suggested that the commission should be required to consider whether those who sold the block in 1859 were legally entitled to do so, whether the deed was voided by reason of its non-compliance with the relevant conveyancing laws, whether bribery was involved in the case and whether the consideration paid was unconscionable.[1298] But when the terms of reference for the Royal Commission of Inquiry were duly gazetted on 14 August 1947 Hall Skelton's representations were ignored in favour of a more general requirement to inquire into and report:

> Whether, due regard being had to the method generally employed throughout the North Auckland District in the conduct of transactions with the Maoris for the cession of land to the Crown at the time when the said Mokau Block was ceded to the Crown, any injustice has been or would be done to the former Maori owners of the said Mokau Block or their descendants or representatives, or any of them, in asserting and maintaining the Crown's title to the said Mokau Block as against such former Maori owners or their descendants or representatives, or any of them.[1299]

The key statement here was the requirement to have due regard for the method of Crown purchasing generally employed in Northland at the time the Mokau block had been acquired. Based on the minuscule amount of documentary evidence concerning negotiations for the block, the Mokau purchase had generally been little worse (or better) than most other transactions completed by Kemp at this time. But the claimants were required to prove that the Mokau purchase was significantly worse than the almost universally abysmal standards of Crown purchasing applied across Northland at the time in order to have their case upheld. Essentially, then, the claimants to the Mokau block were fated to lose their case from the moment the terms

[1298] Hall Skelton to Fraser, 27 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2545].

[1299] Extract from *New Zealand Gazette*, 14 August 1947, no.44, p.989, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2543].

of reference for the inquiry had been drafted unless they could somehow demonstrate that, while all the Crown purchases in Northland stank, Mokau had an especially unpleasant reek to it. And in the absence of adequate documentary evidence concerning the purchase that was almost an impossible task to achieve.

Hall Skelton also objected to the terms of reference, informing the Native Under Secretary on 29 August 1947 'the terms are so narrowed as to avoid the main questions involved in this transaction', referring to the earlier issues he had suggested for inclusion and noting that their exclusion from the inquiry would ensure it gave satisfaction to nobody. Under the circumstances, he warned, he could not consent to participate in the sittings scheduled to start on 1 October 1947 unless the matters excluded were placed within the scope of the commission of inquiry.[1300] This prompted a sharp rebuke from the secretary to the Royal Commission, who noted that its members had gone to considerable trouble to convene a hearing as soon as possible, having been informed the Mokau claim was a matter of urgency, and would proceed to hear the case at Kaikohe on 1 October regardless.[1301] Meanwhile, the Minister of Māori Affairs also wrote to Hall Skelton, informing him that the propositions earlier advanced by him were legal ones, which were more appropriately considered in a Court of law than before a commission of inquiry, though he added that 'even if it be conceded that the Maoris ever did have any such claim, there is not the slightest prospect of it being successfully maintained against the Crown now'. The government accordingly declined to alter the terms of reference for the inquiry.[1302]

With the government drafting terms of reference for the inquiry which made it extremely difficult for the claimants to prove their claim against the Crown, things appeared to be stacked against the Mokau petitioners. Hall Skelton pointed to another obvious imbalance in informing Eruera Tirikatene that he had been 'hampered in the

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[1300] Hall Skelton to Native Under Secretary, 29 August 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2539-2540].

[1301] Secretary, Commission on Maori Claims, to Hall Skelton, 5 September 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2533].

[1302] Minister of Māori Affairs to Hall Skelton, 5 September 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2532].

preparation of the case by lack of funds', given the Ngāpuhi tribe had been 'left almost a landless poor people by the Missionary claims and others and the absurd prices paid through the machinations of the Missionary sons, who became land purchasing officers for the Government'.[1303]

Meanwhile, the Crown solicitor, Vincent Meredith, found preparation of his own case also hampered, though for somewhat different reasons. Nearly a month before the hearing was scheduled to start he wrote to the Native Department to request copies of all original correspondence from 1858 and 1859 relating to the Mokau purchase.[1304] No doubt he was somewhat shocked to learn that a check of the departmental registers had confirmed that the three or four brief letters published in Turton's *Epitome* was the sum total of correspondence from Kemp on the Mokau purchase,[1305] especially given his prior warning that 'the amount involved may be extremely large'.[1306] Kemp's silences with respect to the Mokau purchase were (as with most of his Northland purchases) almost more important that his statements. Meredith must have been reassured to learn that these silences would be consistently interpreted in favour of the Crown by the Myers Commission. There was almost no prospect of the claimants obtaining a favourable verdict from the commission under the circumstances.

### 6.6 The Royal Commission Hearings

The Royal Commission of Inquiry into the Mokau Block duly opened its proceedings at the Kaikohe Courthouse on 1 October 1947 and held a total of seven days of hearings between then and 9 October 1947. Meredith, no doubt hoping for a more sympathetic audience than he had received before Judge Acheson, appeared for the

[1303] Hall Skelton to Tirikatene, 8 September 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2527].

[1304] V. Meredith to R.J. Blane, Native Department, 2 September 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2536].

[1305] Blane to Meredith, 5 September 1947 (telegram), MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2535].

[1306] Meredith to R.J. Blane, Native Department, 2 September 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2536].

Crown, and Hall Skelton for Te Whiu and other related hapū. He had earlier evidently expected to be sole counsel for Māori before the commission,[1307] but found this was not to be the case, with E.C. Blomfield, who had represented the 'Hone Rameka section' before Acheson's inquiry, again appearing for the chief, along with Tamati Mahia, Hare Werohia, Ngāti Tautahi, Ngāi Tawake, and Ngāti Whakaeke. Reynolds represented the Ngāti Uru hapū of Whangaroa, along with Hokianga claimants to the block.[1308]

It was, though, Skelton who took the lead role in presenting the case on behalf of the claimants to the Mokau block, and from the very outset of his submission the problem of Kemp's silences was apparent. Skelton informed the commission that there was 'not one tittle of evidence' in all of Kemp's correspondence to show that he had called a meeting of those interested in the block before executing the deed, but was forced to admit under questioning from Myers that there was in fact no evidence either way on the point:

> The only evidence is he got this Deed signed and he does not say how the job was done, whether he held a meeting or not. He simply says Wi Hau was a good servant of the Government and Wi Hau is the seller. That is all the evidence we have got.[1309]

Myers also took exception to Skelton's allegation that Wi Hau had committed fraud and 'sold out his people's interest without any authority', declaring that accusations of this kind, especially against those no longer around to answer the allegations, were extremely serious and would need to be supported by cogent evidence of fraud. But as Skelton argued, Mokau had belonged not just to a few chiefs, but to the families and individuals of the different hapū with interests in the lands, and 'no Chief, no matter

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[1307] Hall Skelton to Fraser, 27 June 1947, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2545].

[1308] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.1, MA 92/1, Arch-NZ, [docs, vol.7, p.2116].

[1309] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.4, MA 92/1, Arch-NZ, [docs, vol.7, p.2119].

how high, had a right to sell one acre of land without the full consent of the families and individuals of the Hapu or of the tribe'.[1310] Perhaps this was an issue upon which the burden of proof lay more squarely with the Crown to prove that the limited number of chiefs who signed the Mokau deed did so with the full knowledge and consent of their people. Yet as with most other Northland Crown purchases, Kemp left no indication at all as to the extent of his consultation on the proposed transaction – or indeed whether there had been any consultation at all, other than with Wiremu Hau. If the other owners had not been consulted – and there is no reason to assume that they had – then the transaction was less an act of fraud on Wiremu Hau's part than an act of theft on the Crown's.

But if the remaining owners had been dispossessed then surely there would have been loud howls of protest from a very early date. This was no doubt the point Myers had in mind in asking Skelton very early on in proceedings the date of the first recorded complaint regarding the Mokau purchase. Skelton responded that this had not been until about 1902, but had also noted in his submissions that the people who continued to live on the block and utilise its resources for at least four decades after the supposed sale in 1859 had no knowledge of the transaction.[1311] As Skelton observed, for practically 50 years after the 'sale', the customary owners of the block had continued to use it for gum digging, pig-hunting, pigeon shooting and other purposes. Several homes were also on the block and some of the witnesses he was to call had even been born on the land – after 1859.[1312] Contrast this with the lack of effective Crown occupation of the lands over the same period and the absence of earlier complaints from Māori becomes entirely explicable.

Skelton also argued that considerable confusion had resulted from the use of the name 'Mokau' for the block, a label which, he asserted, was associated with the region to the north of the block, in the area which subsequently became the two Land Court

[1310] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.4, MA 92/1, Arch-NZ, [docs, vol.7, p.2120].

[1311] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, pp.4, 7, MA 92/1, Arch-NZ, [docs, vol.7, p.2120].

[1312] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.21, MA 92/1, Arch-NZ, [docs, vol.7, p.2137].

blocks of Mokau No.1 and 2. The 'Mokau' block sold in 1859 was more properly called Takapau below the Waipapa River which ran through it and Manginangina above the river. There was, Skelton alleged, 'only one man that seems to have known that Mokau was sold and he really seemed to think it was the Mokau above Manginangina'.[1313]

The reference to only one person knowing what had been sold was linked to another of Skelton's primary assertions regarding the other signatories to the deed. According to Skelton, nearly all of the signatories to the deed, other that Wiremu Hau, had their names added to the document by other people acting as proxies for them.[1314] Yet the thoroughly confused (and confusing) evidence on this point only reinforced the impression that even the deed itself could not be relied on as a reliable guide to the circumstances behind the signing of the Mokau deed.

Nearly all of the claimant arguments that might be advanced concerning the Mokau transaction related in some way to the ambiguity or complete lack of documentary evidence on crucial points. But at least on the question of price there was some solid empirical data to go by – and the 'unconscionable price' paid for the block had been the point on which Acheson's report had most strongly endorsed the claimant arguments. Not surprisingly, therefore, Skelton again alleged that the price paid for the block had constituted an 'unconscionable bargain' and observed that the Mokau claimants were still waiting for the measurements of the Puketi State Forest they had failed to receive in time for the previous inquiry.[1315] The 7224-acre block contained, he argued, the most valuable forest in New Zealand, worth up to £15,000,000 in terms of the resale value of the timber landed in Auckland, but sold by Wiremu Hau 'for a mess of pottage'.[1316]

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[1313] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.13, MA 92/1, Arch-NZ, [docs, vol.7, p.2129].

[1314] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.2, MA 92/1, Arch-NZ, [docs, vol.7, p.2118].

[1315] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, pp.7, 9, MA 92/1, Arch-NZ, [docs, vol.7, pp.2122, 2124].

[1316] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.29, MA 92/1, Arch-NZ, [docs, vol.7, p.2143].

He offered an interesting perspective as to why the Mokau claim had assumed such central importance for all of Ngāpuhi in suggesting that, although there had been many 'unconscionable bargains' made in the north by means of Crown purchase, nearly all of the other blocks in question had been settled by Europeans and cleared of forest.[1317] Mokau remained one of the few blocks which Māori could legitimately seek the return of without prejudice to local Pākehā. Not only that, but it contained an immensely valuable resource which local Māori – having (belatedly, according to Skelton) learned of its alienation to the Crown – felt they had not been recompensed for in any way.

Skelton called four witnesses in support of his arguments. Samuel Maioha, the first of these, was an experienced interpreter and prominent Northland Māori leader from the Ngāi Tawake hapū.[1318] His evidence on the Mokau deed itself revealed serious ambiguities as to exactly who had, and who had not, signed the deed and whether they had done so as proxies or in their own right,[1319] reinforcing Skelton's more general argument that the document would not have complied with conveyancing laws then applicable to transactions between private parties.

The 73-year old Tamati Arena Napia was, though, the key witness for Skelton's clients. Napia informed the inquiry that the 7224-acre block was really one block of land separated by the river, but with two different names for each side of it, Takapau for the south and Manginangina for the area to the north of the Waipapa River. He had been appointed as a kaitiaki for the forest, which continued to be freely occupied and utilised by local Māori until the early twentieth century. Only after that time, when a ranger had been appointed for the area and a petition drafted by Hone Heke concerning its ownership, had he learned that the block had supposedly been sold to the Crown many decades earlier under the name of 'Mokau'. The 'real Mokau', he

[1317] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.8, MA 92/1, Arch-NZ, [docs, vol.7, p.2123].

[1318] Angela Ballara, 'Maioha, Hamiora Wiremu 1888-1963', DNZB, vol.3, pp.323-324.

[1319] Report of Proceedings before the Royal Commission on the Mokau Block, 2 October 1947, pp.32-36, MA 92/1, Arch-NZ, [docs, vol.7, pp.2147-2151].

informed the commission, was the area to the north of the 7224-acre block (that is, the numbered Mokau blocks alienated in the post-1865 period).[1320]

Nika Anihana, who was 79 years old and belonged to the Popoto and Te Whiu hapū, was the next to testify. He informed the commission that both he and his parents had lived on the Mokau block, until the early twentieth century.[1321] Tawiti Aperahama, a nephew of Anihana, testified next, telling the commission that he had been born on the Mokau block in about 1888 and had lived on it for about 20 years.[1322]

Reynolds, the counsel for the Whangaroa and Hokianga claimants to the block, also presented lengthy submissions, largely in support of those made by Skelton, but differing crucially on the issue of entitlement. The question as to whether Te Whiu were the only hapū with valid customary rights in the block was a critical one in terms of the overall validity of the 1859 deed. Napia had earlier, under questioning from Reynolds, agreed that Ngāti Uru were customary owners in the block, but rejected Hokianga claims in the area, while Acheson had also earlier admitted Whangaroa people into the title for the 100-acre Motukauri block.[1323] Reynolds reminded the commission of this 1934 judgment, and observed that the crux of his claim was the right of Te Whiu to sell the Mokau block.[1324]

Although he accepted that Wiremu Hau did have an interest in the Mokau block, Reynolds argued on the basis of later Land Court determinations of title to adjacent lands (in which the Whangaroa and Hokianga people had received titles) that the

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[1320] Report of Proceedings before the Royal Commission on the Mokau Block, 2-3 October 1947, pp.37-51, MA 92/1, Arch-NZ, [docs, vol.7, pp.2152-2166].

[1321] Report of Proceedings before the Royal Commission on the Mokau Block, 3 October 1947, pp.61-67, MA 92/1, Arch-NZ, [docs, vol.7, pp.2176-2182].

[1322] Report of Proceedings before the Royal Commission on the Mokau Block, 3 October 1947, pp.68-69, MA 92/1, Arch-NZ, [docs, vol.7, pp.2183-2184].

[1323] Report of Proceedings before the Royal Commission on the Mokau Block, 3 October 1947, pp.46-49, MA 92/1, Arch-NZ, [docs, vol.7, pp.2161-2164].

[1324] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.90, 93-94, MA 92/1, Arch-NZ, [docs, vol.7, pp.2205, 2208-2209].

signatories to the 1859 deed constituted 'only...a small portion of the true owners'.[1325] Quoting Acheson's finding that the 1859 Mokau transaction had failed to protect the rights of the families and individuals of Te Whiu, Reynolds argued that the rights of the Whangaroa and Hokianga people had been totally ignored in the purchase and that Kemp had failed to conduct any investigation into customary claims to the block prior to concluding the deal with Wiremu Hau. While Hau had been entitled to sell his lands, Reynolds argued, he was not entitled to sell the lands of other tribes, and Kemp was not entitled to assume that Hau was the sole owner of the Mokau block.[1326] Indeed, in Reynolds' submission, Kemp, as a servant of the Crown, was obliged to follow the principles of the Treaty of Waitangi in all his dealings with Māori, but had patently failed to do so in his negotiations with respect to the Mokau block.[1327]

Keina Poata (Porter) was the first of five witnesses called by Reynolds. Poata, who was 61 years old and belonged to the Ngāti Uru hapū at Pupuke, confirmed the interests awarded to his hapū in adjacent blocks, including Motukauri, and testified that his people had previously been in occupation of the block. Reynolds's subsequent witness, an acknowledged expert in matters of whakapapa, testified that of the seven owners granted title to the adjacent Waitaroto block, all but Wiremu Hau belonged to Waka Nene's hapū at Waihou.[1328] Waimate Anaru, the following witness, testified that he was descended from the ancestor Korohaere, who had lived at Takapau, or Te Takapau-o-Korohaere as it was earlier known. The latter was, of course, the name under which application had been made to the Native Land Court for investigation of title to at least a portion of the 7224-acre Mokau block in 1911.[1329] Wairama Riwhi from Ngāti Uru also provided further evidence of ongoing occupation of the block

[1325] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, p.91, 93-94, MA 92/1, Arch-NZ, [docs, vol.7, p.2206].

[1326] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.104-106, MA 92/1, Arch-NZ, [docs, vol.7, pp.2219-2221].

[1327] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, p.105, MA 92/1, Arch-NZ, [docs, vol.7, p.2220].

[1328] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.117-118, MA 92/1, Arch-NZ, [docs, vol.7, pp.2232-2233].

[1329] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.118-119, MA 92/1, Arch-NZ, [docs, vol.7, pp.2233-2234].

after 1859,[1330] while Reynolds' final witness, who was connected by marriage to the family of Waka Nene, told of hearing about a great dispute between the chief and Wiremu Hau at a Land Court hearing concerning the boundary between Te Whiu and Nene's people.[1331] Reynolds had earlier made much of this evidence in his opening submissions, suggesting it provided proof of an early objection from Waka Nene to the Mokau deed, though the witness was unable to confirm that the dispute did concern Mokau specifically.

Like Reynolds and Skelton before him, Blomfield's submissions also made reference to the principles of the Treaty of Waitangi – an emphasis which Sir Michael Myers, it would seem, considered irrelevant. He informed Blomfield that 'possibly a good deal too much is being made about the Treaty of Waitangi'.[1332] Yet Blomfield had argued that the Treaty had provided recognition for customary Māori forms of ownership of land, and that in the absence of any statutory law dealing with individual or tribal rights to those lands prior to 1863 the only right which the Crown acquired in the Mokau block by virtue of its 1859 purchase were the undivided individual interests of those who had signed the deed. The rights of all other owners in the block, including, he argued, his own clients Ngāti Tautahi, Ngāi Tamawake and Ngāti Whakaeke, had therefore remained very much alive, at least until the Native Land Act of 1909, which had stipulated that customary title was deemed to be extinguished to all lands continuously in Crown possession for a period of at least ten years.[1333] The Crown's 1859 Mokau transaction had, Blomfield suggested, been viewed by other claimants to the land as little more than an undefined alienation of individual interests in the block, and hence not necessarily seen as prejudicial to the interests of other groups with claims on the land until 1909.

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[1330] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.119-120, MA 92/1, Arch-NZ, [docs, vol.7, pp.2234-2235].

[1331] Report of Proceedings before the Royal Commission on the Mokau Block, 6 October 1947, pp.121-122, MA 92/1, Arch-NZ, [docs, vol.7, pp.2236-2237].

[1332] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, p.123, MA 92/1, Arch-NZ, [docs, vol.7, p.2240].

[1333] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, p.130, MA 92/1, Arch-NZ, [docs, vol.7, p.2245].

Hemi Toia, one of three witnesses called by Blomfield, told the commission he was 56 years old and claimed interests in Mokau through his Ngāi Tautahi hapū. He stated that he had not heard of the 1859 sale until 1934, when he had attended the Motukauri investigation of title at Whangaroa. His family had lived on the block periodically until around the turn of the twentieth century, when the advent of a ranger for the forest saw the people living in the area ejected. Earlier, his grandfather, Wi Takahi, had died on the land.[1334] Tamati Mahia claimed that he had not learned of the sale of the Mokau block until 1936, and also informed the commission of ongoing occupation of the lands, including cultivations and the working of timber on the block as recently as forty years previously.[1335] Pana Hohaia, Blomfield's final witness, informed the commission that he was not making a claim but had been asked to appear as he had lived on the reserve at Te Tarawa and had observed his elders engaged in gum digging, bird shooting and other activities in the forest whilst there.[1336]

Vincent Meredith opened his case for the Crown by lamenting the fact that the commission had been asked to inquiry into a deed of cession dating from a time when it was 'impossible to really get any evidence...that is worth anything'.[1337] Prior to the hearings commencing, of course, he had been anticipating a large volume of documentary evidence dating from the time of Kemp's negotiations for Mokau would be supplied him by the Native Department. Now that he had discovered that a handful of tersely-worded letters was the sum total of correspondence on the question he was suggesting that it was 'impossible' to expect more than this. But as Hall Skelton had noted early on in proceedings:

> One would have thought that Mr. Kemp, acting in a responsible way as protector of the Maoris, would have said "I have got Wi Hau to call together

[1334] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, pp.131-133, MA 92/1, Arch-NZ, [docs, vol.7, pp.2246-2248].

[1335] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, pp.133-137, MA 92/1, Arch-NZ, [docs, vol.7, pp.2248-2252].

[1336] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, pp.137-138, MA 92/1, Arch-NZ, [docs, vol.7, pp.2252-2253].

[1337] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, p.139, MA 92/1, Arch-NZ, [docs, vol.7, p.2254].

> the people – I have gone around the district and enquired what other hapus are entitled to an interest in this block of land. The position has been fully explained to them, and I am satisfied that they thoroughly understand what they are doing.["] Not a word![1338]

He had a good point: surely it was eminently possible for Kemp to report that he had taken such steps – if he had in fact bothered to implement such minimum requirements for a fair and transparent transaction. That he had not reported taking such measures would only tend to suggest that he had failed to do any of these things.

Meredith's next focus for attack was the 'class of oral evidence we have been hearing in the last day or two, of statements by individuals who have an interest in this claim – of reporting and giving in evidence what their grandfathers or some relative has said to them'.[1339] Perhaps the Crown counsel had expected to find an abundance of lucid centenarians in Kaikohe with extremely good memories of their childhood and who had happened by chance or otherwise to have been present at the Mokau deed signing in 1859. In the absence of anything close to adequate documentary evidence regarding the Mokau transaction, the testimonies of those to appear before the commission at least provided some further details regarding how the transaction had been regarded by subsequent generations of local Māori. And on this front, Meredith could find little to counter the compelling evidence of ongoing Māori occupation of the Mokau block for at least four decades after its supposed alienation to the Crown in 1859 – and conversely the complete absence of any effective Crown occupation of the area over the same period. No wonder all he could do was to seek to discredit the testimony of the many witnesses from several different hapū – all of whom had been adamant that the block had effectively remained in Māori ownership until at least the early twentieth century.

Meredith wisely refrained from making any reference to the history of the Mokau block itself between 1859 and the turn of the twentieth century, instead introducing

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[1338] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.17, MA 92/1, Arch-NZ, [docs, vol.7, p.2132].

[1339] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, p.139, MA 92/1, Arch-NZ, [docs, vol.7, p.2254].

plans and Native Land Court testimony from neighbouring blocks in an effort to clearly prove that all potential claimants to the land were fully aware of its alienation from an early date. Despite what he claimed was clear evidence of such knowledge, Meredith asserted that suggestions that groups outside of Te Whiu (and presumably individuals within the hapū who had not been signatories to the 1859 deed) had customary claims on the land ought to be disregarded on the grounds that:

> if it were a genuine claim the time there has been – over half a century in which to raise it – and it has not been raised...It has never been raised until of recent years, and this forest has grown – is standing there – and is now conceived to be a valuable asset. The question was that it was never raised in those days, and it was brought under their notice – must have been under their notice time after time, and I say that the inference to be drawn from the non-raising is that they had no interest.[1340]

The clear implication of Meredith's argument was that Māori were now dishonestly seeking to claim land which they had no valid entitlement to, having seen the value of the kauri asset on it increase over time. This was a view strongly challenged by the Ngāti Porou member of the Royal Commission, Hanara (Arnold) Reedy, who as a member of the 28th Māori Battalion had doubtless fought alongside some of those now claiming rights in Mokau.

Reedy, in fact, also challenged Meredith's argument that Kemp had played a limited and honourable role in the notorious South Island land transaction which bore his name. The Kemp purchase, covering an area of approximately 20 million acres (or nearly one-third of the country) had been negotiated by Kemp in 1848 for the sum of £2000. Meredith sought to argue that Kemp had been unfairly blamed for what had transpired, asserting that he had merely been following orders issued by Sir George Grey, and that the purchase should not therefore been taken as an indication of Kemp's character and integrity as a person, or his methods as a land purchase

[1340] Report of Proceedings before the Royal Commission on the Mokau Block, 8 October 1947, p.168, MA 92/1, Arch-NZ, [docs, vol.7, p.2282].

officer.[1341] More desperately, perhaps, he also asserted that the price paid for the Mokau block was 'rather high considering South Island purchases'. No doubt it was, but Kemp could have paid £10 for the whole of the Mokau block and it still would have seemed high in comparison with the Canterbury (Kemp) purchase. Meredith really was grasping at straws here.

No doubt realising that the issue of the price paid for Mokau was one of the areas where the Crown was most vulnerable to attack, Meredith sought to argue that in order to prove any injustice it would need to be shown that the price paid had not just been inadequate, but could be demonstrably proven to have been grossly inadequate.[1342] In this regard, he argued that land was of 'very little exchangeable value unless it was close to a port or some centre of population' at the time of the Mokau transaction and that there was no market at all for kauri timber. Puketi was 'not a wonderfully good forest at all', he argued, but had attained what value it now had through substantial Crown investment since 1859 in roading and forestry maintenance.[1343] Perhaps he was forgetting Kemp's July 1858 report that there was already 'an available road' connecting Mokau with elsewhere,[1344] and evidence presented earlier to the commission which suggested that, far from being isolated, roads or trails connecting it with Whangaroa and Hokianga ran through or very close to the block.

According to Meredith, Hall Skelton's suggestion that the contemporary forestry valuation was at least £5,000,000 was little short of fanciful and was 'really bad to talk about because they give impressions and may lead to people taking steps they should not do'.[1345] Reedy, though, reminded the Crown counsel that during their visit

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[1341] Report of Proceedings before the Royal Commission on the Mokau Block, 8 October 1947, pp.157-160, MA 92/1, Arch-NZ, [docs, vol.7, pp.2272-2274].

[1342] Report of Proceedings before the Royal Commission on the Mokau Block, 7 October 1947, p.139, MA 92/1, Arch-NZ, [docs, vol.7, p.2254].

[1343] Report of Proceedings before the Royal Commission on the Mokau Block, 7-8 October 1947, pp.139, 173, MA 92/1, Arch-NZ, [docs, vol.7, pp.2254, 2287].

[1344] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1345] Report of Proceedings before the Royal Commission on the Mokau Block, 8 October 1947, p.174, MA 92/1, Arch-NZ, [docs, vol.7, p.2288].

to the forest a few days earlier they had been shown a single kauri tree by the side of the road which was estimated to be worth £250 by itself, and noted that if that was multiplied by the number of trees over the full 7224 acres that was surely bound to 'make people think'. Meredith argued that the tree they had seen was nothing more than a 'show piece'.[1346] The very valuable 'show piece' may, in fact, have been one of the trees whose felling had led to the appointment of the Royal Commission in double quick time. Meredith had, just a few weeks before the start of the hearings, successfully applied for an interim injunction against the removal of the trees felled by Napia and his supporters. According to Hall Skelton, it had been intended that these should be used in the construction of a technical college in the north, although earlier reports had suggested they were to be used to improve Māori housing in the area.[1347] Either way, the valuation placed on the Puketi State Forest was clearly an issue of considerable importance to the inquiry.

The evidence of Roderick Campbell, the recently-retired Conservator of Forests in Auckland, was always going to be crucial on this point, given Hall Skelton's longstanding complaint that the Crown had refused to provide valuation and measurement information requested as far back as the Acheson inquiry. Campbell asserted that Mokau was 'poor land', considered the Puketi State Forest 'hopeless' as a commercial proposition and described the kauri contained on the block as 'unmarketable' as at 1859 due to the inaccessible nature of much of it. Yet he was forced to conceded under cross-examination that the primary method of removing timber from forests until the early twentieth century had been by means of floating it down rivers and agreed that much of the timber on the Mokau block could have been removed by these means at minimal cost.

Campbell had prepared a list of blocks purchased between 1855 and 1875 which were 'considered comparable to [the] Mokau Block as regards timber stands and location' in order to prove his point that there was 'no great discrepancy' between the price

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[1346] Report of Proceedings before the Royal Commission on the Mokau Block, 8 October 1947, p.174, MA 92/1, Arch-NZ, [docs, vol.7, p.2288].

[1347] Report of Proceedings before the Royal Commission on the Mokau Block, 1 October 1947, p.22, MA 92/1, Arch-NZ, [docs, vol.7, p.2138].

paid for Mokau and similar lands elsewhere, but again conceded that in some cases supposedly 'comparable' blocks contained only small quantities of timber.[1348] Campbell estimated the quantity of kauri on the block to be in the vicinity of 16,634,007 board feet, which he valued at £121,509 but admitted that various deductions had been made for previous and projected expenditure, not just in respect of the Mokau block, but with respect to the 17,164-acre Puketi State Forest as a whole.[1349] Hall Skelton facetiously offered £240,000 for the block, and cited figures from a 1919 book, published by the government and written by the then head of the Forestry Department, which had estimated the forest as containing in excess of 80,000,000 feet of kauri.[1350] All Campbell could do was to say he disagreed with Hutchins' estimate, though all three claimant counsel took issue with the cruise method (which measured the forest only at every tenth chain and extrapolated the results from this) that had been used to arrive at the much lower figure now cited by the Crown.[1351]

For all of the facts and figures cited in support of it, Campbell's evidence had been far from convincing, and the question of the forest's correct valuation would be an ongoing source of controversy after the commission ended its hearing. Campbell was followed into the witness box by Owen Darby, the man who had lost Motukauri – supposedly part of the Mokau block – for the Crown before Judge Acheson in 1934. Meredith had made much of the fact that various plans for adjacent blocks taken before the Native Land Court had described Mokau as 'government land', but Darby agreed under questioning that the surveyors in question could have obtained this

[1348] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.200, MA 92/1, Arch-NZ, [docs, vol.7, p.2314]; Statement of Native Lands purchased between 1855 and 1875 considered comparable with Mokau Block as regards timber stands, Exhibit F, MA 92/3, Arch-NZ, [docs, vol.7, pp.2442-2443].

[1349] Statement showing quantity of millable timber on Mokau Block, Exhibit E, MA 92/3, Arch-NZ, [docs, vol.7, p.2441].

[1350] See D.E. Hutchins, *New Zealand Forestry. Part One: Kauri Forests and Forests of the North and Forest Management*, Wellington: Government Printer, 1919. Hutchins (p.107) had estimated the kauri reserves within the Puketi Forest as a whole at 100 million superficial feet.

[1351] Report of Proceedings before the Royal Commission on the Mokau Block, 8-9 October 1947, pp.191-218, MA 92/1, Arch-NZ, [docs, vol.7, pp.2305-2332].

information from the Survey Office without reference to the claimants to the different blocks.[1352]

In summing up the Crown submissions, Meredith informed the commission of inquiry that 'the Deed was properly executed by people who had a right to execute it and a fair price was paid for it. All the Natives in the surroundings districts were aware of this sale and no exception had been taken during a very long period of years in connection with it.' Such being the case, he argued, the deed of purchase for Mokau could not in any way be impeached:

> and if such a matter can be impeached after this time...no title in this country can be safe because one would be in this position because all the lands and everything has generally come from purchase from the Natives and if in any section there has been a great increase in values it would be open for any body of Natives to come and say "Oh, the wrong people sold that. My grandfather told me they were interested in this" and they claim to this at a time when it is impossible to refute it because everybody is dead and the longer the claims are left the more difficult they would be to refute, and it is open to this – where is Waipoua? where is every other property that still remains the property of the Crown?[1353]

Ultimately the Crown's defence of its claims to Mokau boiled down to the same thing Shepherd had returned to in rejecting the claims: where would it all end? What would be next after Mokau?

Mokau was not the only case, of course, in which there was almost no evidence of consultation having taking place and ample opportunity for fraud to have been committed in a variety of ways given the paucity of documentary evidence kept by Kemp to support the Crown's claims to the lands. Exactly the same circumstances applied with respect to the majority of other purchases completed in Northland prior

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[1352] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.231, MA 92/1, Arch-NZ, [docs, vol.7, p.2345].

[1353] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.237, MA 92/1, Arch-NZ, [docs, vol.7, p.2351].

to 1865. Meredith had suggested that it was virtually impossible to prove that adequate consultation had taken place with all potential claimants to the lands, but it would have been much easier to do so if full records had been kept of the negotiations. If the correspondence from Kemp on the Mokau purchase did accurately represent the full extent of consultation (with its statement that Wiremu Hau was 'the seller') then there was no doubt that a grave injustice had been done. But perhaps Kemp actually had called a whole series of hui to discuss the proposed purchase and tease out competing rights to the block, but had simply failed to record either this fact or any of the subsequent discussion which had ensued at such hui in any official correspondence? Perhaps he had also travelled to Hokianga and Whangaroa to alert potential claimants in those places to the offer of the land and to inquire into their claims on it but had similarly forgotten to note this anywhere? Perhaps he had attended a meeting of Te Whiu at which the right of a handful of chiefs to transact the block on behalf of the rest of their hapū had been approved but had also forgotten to record this fact anywhere?

According to Meredith, Judge Acheson had unfairly placed the onus of proof on the Crown to prove its title to Mokau, assuming, in the absence of evidence to the contrary, that Kemp had failed to undertake the necessary consultation required to ensure the validity of the transaction.[1354] Hall Skelton, though, contended that it was entirely appropriate for the Crown to have to prove its title, citing legal precedents regarding contracts entered into between parties on unequal terms, while Reynolds reminded the commission that the Crown had agreed at the start of the hearing that it would prove its title, but had then simply proceeded to produce the deed and subsequent proclamation extinguishing native title.[1355] Where the Royal Commission placed the burden would be the crucial factor in determining the outcome of the inquiry.

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[1354] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.234, MA 92/1, Arch-NZ, [docs, vol.7, p.2348].

[1355] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, pp.238-248, MA 92/1, Arch-NZ, [docs, vol.7, pp.2352-2362].

### 6.7 The Myers Report

Of all of the evidence heard before the Royal Commission none appears to have riled those claimants present more than that of Campbell, who had argued that Puketi State Forest was not a viable commercial entity and had generally sought to downplay the value of the block. Skelton noted in his closing submissions that the formerly rival claimants to Mokau had now agreed to unite together and one of their first decisions was to raise the necessary funds to undertake an accurate measurement of the kauri contained on the block.[1356] The suggestion earned little more than a rebuke from Myers, who observed that these were the same people who had previously been unable to pay their lawyers and generally doubted whether a further valuation of the forest would be necessary, perhaps indicating that he had already formed the view that the claim was of little merit.[1357]

But in January 1948 representatives of the Mokau claimants wrote to Eruera Tirikatene to complain that the plan of forestry on the block first produced in evidence by Campbell at the recent hearing, had shown an area described as 'Old Maori Workings', which they alleged was the area milled by the Railways Department during the period between 1912 and 1936 when it had control of the forest. Campbell had implied during the hearing that the Railways Department had taken little, if any, kauri out of the forest during this period, finding the quantity of timber available to them did not warrant the expenditure required to access it.[1358] The complainants now requested that a full search be undertaken of the files of the Railway Department to determine the quantity of timber milled over the 24 years in which it had cutting rights to the forest and further criticised the plan presented to the Royal Commission as 'so prepared as to utterly depreciate the amount of Kauri now remaining in the forest, as we know there are large Kauris in abundance on the block shown on the plan showing "no Kauri"'. They therefore also requested that the government

[1356] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.249, MA 92/1, Arch-NZ, [docs, vol.7, p.2354].

[1357] Report of Proceedings before the Royal Commission on the Mokau Block, 9 October 1947, p.249, MA 92/1, Arch-NZ, [docs, vol.7, p.2354].

[1358] Report of Proceedings before the Royal Commission on the Mokau Block, 8 October 1947, p.180, MA 92/1, Arch-NZ, [docs, vol.7, p.2294].

commission an independent report from a qualified timber expert as to the correctness of the plan produced before the inquiry, and warned that if this was not done, 'the Commission's report will be abortive if they have been mislead [sic] by Campbell's evidence'.[1359]

Hall Skelton wrote a letter in support of these requests on 9 March 1948, but Tirikatene was informed a fortnight later that:

> The solicitors have been advised by the Secretary to the Commission that the Commission has completed its inquiries and has finalized and sent in its report. As to the Mokau matter, the commission is functus officio [that is, had performed its office], and there is nothing further that it can do, even if it considered that the question now raised was a material one.[1360]

However, a memorandum sent to the third member of the Royal Commission, Albert Samuel, just a few days before this was more revealing, noting that:

> The Chairman has seen both letters. His view is that there is nothing in them which has not been sufficiently covered in the reports and that, in the light of what has been said in the report, the point which is now sought to be made is really immaterial.[1361]

The Royal Commission into the Mokau Block had, in fact, completed its report on 8 March 1948, though this was not tabled in Parliament until 23 June 1948. In the interim, its unwillingness to reopen the valuation question, despite allegations of inaccurate or misleading information being supplied by the Crown, was a clear enough indication that its report was likely to prove unfavourable to the claimant case

[1359] T. Nepia [sic – 'Napia'?] and Pene Tuwhare to E.T. Tirikatene, 21 January 1948, MA 1 (Box 121) 5/13/75, Petition No.107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2526].

[1360] Māori Affairs Under Secretary to Tirikatene, 23 March 1948, MA 1 (Box 121) 5/13/75, Petition No.107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2522].

[1361] Secretary of the Māori Land Claims Commission to A.M. Samuel, 18 March 1948, MA 92/3, Arch-NZ, [docs, vol.7, p.2453].

and helped to ensure that the Royal Commission would not be the last word on the matter.

It did not take long for this lingering discontent at some of the Crown evidence presented to the Myers inquiry to be felt. On 22 March 1948 the Director of Forestry, A.R. Entrician, informed the Commissioner of State Forests that he had received information by phone that day that 'a party of Maoris, led by Tommy Allen (T.A. Napia) had again entered the State Forest with the intention of further cutting'. The Conservator of Forests had been advised to consult the Crown Solicitor in Auckland (Meredith), 'with a view to taking such action as may be necessary to avoid a repetition of the previous trouble', and had been advised that the Supreme Court injunction against Napia granted just before the commission's hearing was held was still in force 'and if not obeyed further action will be a matter for the Police'. Entrician added that when the position was made known to Napia, 'possibly there will be no further trouble, but in any case the matter calls for firm action by the Police as Allen is obviously trifling with authority'.[1362]

Meanwhile, early in May 1948 Hall Skelton forwarded the Prime Minister a letter from H.P. Knutzen, who wrote that in 1918 he had camped in the Puketi State Forest for a month for the purpose of measuring the kauri contained in the forest for the government.[1363] As Hall Skelton observed, the Crown had informed Judge Acheson's inquiry that the forest had never been measured. That statement was now shown to be, whether deliberately or otherwise, quite wrong, but on the substantive issue there were further discrepancies. Whereas Campbell had estimated the quantity of millable kauri on the Mokau block at less than 14,500,000 feet, Knutzen's 1918 estimate was more than double this, at approximately 38,000,000 feet. Hall Skelton suggested that evidence of this earlier measurement of the forest may have been deliberately suppressed from the Royal Commission and observed that the Mokau claimants were 'highly incensed at what they conceive to be utterly biased evidence' presented just a few months earlier. His clients now sought to have this new information placed before

[1362] Director of Forestry to Commissioner of State Forests, 22 March 1948, MA 1 (Box 121) 5/13/75, Petition No.107/1944 pt.2, Arch-NZ, [docs, vol.8, p.2519].

[1363] H.P. Knutzen to Hall Skelton, 14 April 1948, MA 1 (Box 121) 5/13/75, Petition No.107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2516-2517].

the Māori Affairs Committee so that the true position of the forest as at 1859 and 1947 could be assessed. If not, the government was again warned, 'the whole Commissions' report will be abortive on the main issue'.[1364]

Under the circumstances, the credibility of the report of the Royal Commission into the Mokau Block was strained even before its tabling in Parliament in June 1948. As noted earlier, its terms of reference had made it extremely difficult, if not impossible, for the claimants to expect a favourable verdict on their grievances and the narrowly-legalistic approach adopted in the report removed any residual doubts on this question. The Commissioners observed that:

> Our inquiry has, of course, been made on the hypothesis, which is now common ground, that the title of the Crown cannot be impugned or attacked in law, and what we have to do is to consider whether, on the material placed before us by the parties, any wrong or injustice has been or is being done to the original Maori owners or their descendants by asserting and maintaining the Crown's title to the block, and, in the performance of that task, to apply principles of equity and fairness.[1365]

The 'common ground' referred to was, of course, largely a consequence of statutory provisions introduced from 1902 onwards which prevented Crown titles from being attacked – a response to Privy Council judgments which had opened up that possibility. But the real killer in so far as the claims over Mokau were concerned were three 'fundamental maxims and rules' deemed applicable in considering the equity and fairness of the 1859 transaction:

> (i) The title to the Crown being unassailable in law, the onus of showing that some wrong or injustice has been done must necessarily lie upon those who assert it – *i.e.*, the Maori claimants.

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[1364] Hall Skelton to Peter Fraser, 4 May 1948, MA 1 (Box 121) 5/13/75, Petition No.107/1944 pt.2, Arch-NZ, [docs, vol.8, pp.2514-2515].

[1365] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.7, [docs, vol.13, p.4502].

> (ii) Law, equity, and common-sense alike discourage stale demands where a party has slept upon his rights and acquiesced for a great length of time. The established Courts, indeed, refuse to lend their aid to such claims. We cannot ignore this rule, though we consider that, in applying it, some latitude should be allowed in respect of a Maori claim such as this, but not to the extent of excusing delay which must be regarded as in itself unconscionable, or which has been such as to be calculated to prejudice the opposing party (in this case, the Crown), or to prevent the possibility of evidence being given which would have been available by way of answer had the claim been made in reasonable time.
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> (iii) From lapse of time all things are presumed to have been done rightly and regularly...The law will presume in favour of honesty and against fraud, and the presumption acquires weight from the length of time during which a transaction has subsisted.[1366]

Some fairly cogent reasons had been advanced at the October 1947 hearing as to why the onus of proof should sit with the Crown to prove good title to the lands – as Meredith had indeed promised to do at the start of proceedings – and these had not been questioned by the commission in any way at that time. But with that burden now placed firmly on the shoulder of the claimants to the block, the paucity of documentary evidence surrounding the negotiations for the Mokau lands rendered their case unwinnable. And not surprisingly, considering the weight placed on the argument that the claimants to the block had slept on their rights for over 70 years, the fact that Māori had remained in effective occupation and possession of Mokau for more than 40 years – and that the Crown had at no point during that time assumed more than paper ownership of the lands – was nowhere mentioned in the report of the Royal Commission. In this respect, and more generally, the commission's report echoed the submissions made by the Crown in 1947.

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[1366] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.7, [docs, vol.13, p.4502].

Hall Skelton had argued that many of the names on the 1859 Mokau deed had been placed there by proxies, and that (apart from Wiremu Hau) the other persons listed may not have been in attendance at the signing, but the Royal Commission, acting on its 'fundamental maxims', found that 'there is no justification for asserting, in the absence of proof or evidence, that the parties were not actually present and did not give authority for their signatures or marks to be placed upon the deed'.[1367] Likewise, on the question of the rights of the vendors to sell the block, Myers and his fellow commissioners concluded that:

> with possibly two exceptions, all of the signatories, whether they signed by name or mark, were rangatiras of the Ngati Whiu. It is suggested that the land belonged not merely to the Chiefs, but to the tribe, that the members of the tribe have not signed, and that there is no proof that the sale was made with their consent. The fact is, however, that in practice in those days it was only the Chiefs who did sign these deeds, and they signed for the tribe. It is true that there is no evidence that there had been a meeting of the tribe or that the Chiefs consulted the tribe, and that the sale was made by general consent, but neither is there any evidence the other way; and in the absence of rebutting evidence, the presumption is that any necessary or customary or prescribed requirements were rightly observed, carried out, and done, and that any necessary consultation had been made or necessary consent obtained.[1368]

The report considered the history of adjacent blocks at some length, in an effort to prove two points; firstly, that other tribes must have known of the 1859 sale; and secondly, that Wiremu Hau's mana over the Mokau block was widely recognised. Yet Wiremu Hau's interests in the block were never at issue: the key question was always whether other groups also had legitimate interests in the block which had not been recognised by Kemp in the transaction. On this latter point, the Royal Commission presumed that:

[1367] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.10, [docs, vol.13, p.4504].

[1368] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.11, [docs, vol.13, p.4504].

> If Waaka Nene had been interested in the land, we cannot think that Wi Hau would have dared sell the land to the prejudice of the rights of that great warrior Chief; nor is it credible that Mr. Kemp would have been a party to a transaction which violated the rights of the great warrior and chief who had been, perhaps of all the Maoris, the greatest and most loyal friend of the Government and to whom the Government was greatly indebted for his help in bringing about the Treaty of Waitangi. The fact that Wi Hau and his fellow-chiefs did sell this Mokau land, and that the transaction was negotiated by Kemp, who was an officer of the Government, are in themselves eloquent testimony to negative the Waaka Nene people's present claim.[1369]

Not doubt this was a superficially attractive argument, except for the fact that, if Kemp had not undertaken a thorough investigation into customary rights to the block prior to the deed signing, he could easily have inadvertently acquired lands to which Nene claimed whilst being none the wiser of this fact. But since the commission had already assumed that 'any necessary consultation' had been carried out by Kemp in the absence of any evidence to the contrary, again the presumption was that the Waihou people (and Ngāti Uru for that matter) had no interests in the lands. Sir Michael Myer's cherished legal maxims thus served to reject the claims of other groups to Mokau as well as the more general grievances advanced in respect of the transaction.

Not surprisingly, considering Ngāti Uru had been admitted into the title for the Motukauri block, the commission dismissed the evidence from this case as 'confused' and not at all 'helpful' in assessing customary rights to Mokau.[1370] And if groups other than Te Whiu did have rights to the 7224-acre block, the commission's other legal maxim – that groups who had slept on their rights should be deemed to have acquiesced – helpfully kicked in to extinguish any residual interests such parties might otherwise have had in the lands. The fact of ongoing Māori occupation of the block for more than four decades was fatal to such an argument and was therefore ignored by the Royal Commission. As the evidence of so many witnesses to the

[1369] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.17, [docs, vol.13, p.4504].

[1370] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.20, [docs, vol.13, p.4509].

inquiry confirmed, Māori had not so much slept on their rights, as literally slept on the Mokau block for much of the period between 1859 and the early twentieth century. Had the commission mentioned this fact in its report it might have had to consider whether the Crown had slept on its rights and acquiesced in ongoing Māori occupation and ownership of the lands. By pointedly refusing to acknowledge this vital piece of information, the commission was instead free to denigrate the claims on the Mokau block as 'an afterthought' built on 'flimsy' evidence.[1371]

The same accusations had been levelled by Meredith during the hearing, and the commissioners also accepted the criterion laid down by the Crown counsel for determining whether the price paid for the block constituted valid grounds for compensation to be paid. On this point, the report noted that:

> the mere fact, if fact it be, that the consideration paid was small would not in itself justify us in making a recommendation for the payment of compensation. Before such a recommendation could be made it must be shown not merely that the consideration was small or inadequate, but that it was so grossly inadequate as really to shock the conscience.[1372]

Judge Acheson's earlier inquiry found that this was indeed the case, but Myer and his fellow commissioners accused the Judge of employing 'very exaggerated language' and of assessing the block's worth in the light of the later value of the forest, rather than taking its 1859 value as the basis for considering the adequacy of the price. In considering this question, the commission adopted the controversial evidence of Campbell almost in its entirety, concluding that there was a very limited market for kauri prior to the late nineteenth century and almost none at all for such 'inaccessible' timber as that located on the Mokau block. That would be the same 'comparatively limited' market, presumably, as the one Hokianga Māori were delivering timber to the value of 'upwards of Ten thousand Pounds' to in 1857 according to the Russell

[1371] Report of the Mokau Royal Commission, AJHR, 1948, G-2, pp.19, 22 [docs, vol.13, pp.4508, 4510].

[1372] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.22 [docs, vol.13, p.4510].

Resident Magistrate,[1373] and at rates as high as 6.5 shillings per 100 feet according to some other sources.[1374] The market for kauri remained a volatile one for much of the nineteenth century. But that a significant market existed for kauri around the time of the Mokau transaction was never really in doubt.

Despite this, the Royal Commission agreed with Campbell that the timber located on the Mokau block 'was of little, if any, commercial value in the conditions existing in 1859', and therefore found that the £240 paid for Mokau, 'seems in these days a very trifling amount, but if it be compared with other purchases of similar land it would seem to be not unreasonably low'.[1375] Noting that they disagreed with Judge Acheson's finding that the price was unconscionable, the commissioners observed that 'possibly the difference between our view and Judge Acheson's is that, on a careful reading of his report, it would appear to us that he may have, in effect, misdirected himself as to the onus of proof'.[1376]

Yet perhaps a further key difference was that, whereas the Myers report adopted a narrowly legalistic approach to considering the Mokau transaction, Judge Acheson had also assumed that Crown agents responsible for the purchase of Māori lands were (or ought to have been) bound by the terms of the Treaty of Waitangi in their conduct. Perhaps anticipating this criticism of its blunt rejection of the claims, the Royal Commission commented that:

> A great deal was said by Judge Acheson in his report and by counsel in the present inquiry about the Treaty of Waitangi. If, as we have found, the land belonged to Ngati Whiu alone and the deed of cession was properly executed

[1373] Clendon to Colonial Secretary, 26 May 1857, T 1/1857/695, Arch-NZ, [docs, vol.6, p.1856]. Clendon's statement is somewhat ambiguous and he may have included the value of the kauri gum trade in this estimate.

[1374] Jack Lee, *Hokianga*, Auckland: Reed Books, 1987, pp.175, 180. In one civil case taken before the Russell Resident Magistrate's Court in 1851 figures of five shillings per 100 feet were cited. William Hobson Tahua v. Mathew Marriner, 5 February 1851, BAVX 4817/1b, Arch-NZ (Akl), [docs, vol.23, pp.7994-7999]. See also Return of Exports from the Port of Hokianga, 6 April 1853-5 July 1853, IA 1/1853/1914, Arch-NZ, [docs, vol.2, p.410]. Some 277,200 feet of hewn timber with a value of over £970 was exported from Hokianga over the three-month period covered by this return.

[1375] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.24 [docs, vol.13, p.4511].

[1376] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.25 [docs, vol.13, p.4511].

> and was binding upon all whom we find to have been the owners of the land, no question arises under the provisions of the Treaty, while, on the other hand, if we had found that any wrong or injustice had been shown, the Commission would have given us ample authority to consider the matter accordingly, irrespective of the Treaty.[1377]

Sir Michael Myers may have been regarded as a brilliant jurist by his colleagues, but like nearly all of them, it would seem, he considered the Treaty an irrelevancy. This was where Acheson truly was radical.

Ultimately, therefore, the Royal Commission on the Mokau Block had arrived at very similar conclusions to Chief Judge Shepherd, though the commission evidently felt it necessary to deny that they had been influenced by the same political considerations he had used in 1941 to reject the claims. Quoting Shepherd's statement that 'if this particular sale can be attacked, many others might, by the same or similar tokens, be impeached', Myers and the other commissioners declared that if they had found that an injustice had been done in the Mokau case, 'we would have said so, irrespective of consequences'.[1378] Although concluding that no injustice had been done to any Māori in the Crown's purchase of the Mokau block, the commission observed that:

> their continuance in agitating their claims since 1941 has been due to the encouragement they received from Judge Acheson's report, which we have rejected. We suggest, in these circumstances, that it would be a gracious act on the part of the Government to pay towards the Maoris' costs and expenses out of an appropriate Maori Purposes Fund, or if such a Fund does not exist, out of the Consolidated Fund, a sum not exceeding £300 in all.[1379]

At 1948 values one large kauri tree from the Puketi State Forest would have just about covered this expense.

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[1377] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.25 [docs, vol.13, p.4511].

[1378] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.26 [docs, vol.13, p.4512].

[1379] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.26 [docs, vol.13, p.4512].

### 6.8 The Aftermath of the Mokau Royal Commission

The Mokau Royal Commission had expressed the hope that its report would be 'accepted as a final determination of this long-standing question'.[1380] But it was soon apparent that this was going to be far from the case. In fact, within a month of the report being tabled in Parliament a further petition, signed by Tamati Arena Napia and 14 others, had been lodged with the Māori Affairs Select Committee. The petition of the 'Ngati Whiu Hapu and others and their Committee of Okaihau' again focused on the highly controversial issue as to the value of the Puketi State Forest. Campbell had gone to the 'the greatest length possible to depreciate the quantity of timber' in his evidence before the commission, it was stated, and had relied on a method that was 'more or less guesswork' in estimating the amount of millable timber at 14,500,000 feet. His valuation of the forest at just £121,509 was, the petitioners asserted, 'utterly ridiculous'. Campbell's evidence, and the plan produced 'in the dying hours of the Commission's enquiry grossly mislead the Commission as to the quantity of Kauri timber in this large Kauri Forest and as the question of quantity is directly in issue in determining the question of inadequate price and unconscionable bargain', the petition continued, 'it is obvious the Report of the Commission on this question was not founded on true facts and a grave injustice has been done to us'. They therefore requested that the Māori Affairs Committee undertake a further inquiry into the matter, and hear the important evidence they had now obtained on these issues, including the evidence of Knutzen, who would testify that a 1918 measurement forwarded to the government at the time had estimated the kauri at 38,000,000 feet and that more than 1000 acres of heavily-wooded kauri forest within the block had been commercially milled.[1381]

The same allegations had been made by Hall Skelton prior to the release of the Royal Commission's report, and in August 1948 Vincent Meredith, having consulted with Campbell on the issue, forwarded a detailed response to these to the Under Secretary of Māori Affairs. Meredith wrote that he was entirely confident that 'none of the

[1380] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.5 [docs, vol.13, p.4501].

[1381] Petition of Tamati Arena Napia and 14 others, Petition No.34/1948, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, pp.2511-2513].

allegations made by Mr. Skelton have the slightest foundation' and would be extremely surprised if it were otherwise as his junior counsel, McCarthy, had spent 'many hours of painstaking work in order to present a picture to the Commission which was 100% accurate'. He denied having wrongly informed Judge Acheson that the kauri on the Mokau block had never been measured, dismissing Knutzen's 1918 work as providing 'approximate estimates only' as to the quantity of timber on the block. By contrast, the cruise method employed in arriving at the figures cited by Campbell was 'accepted throughout the world as a reasonably accurate method of timber computation', and suggestions to the contrary were utterly 'irresponsible'.[1382]

It was hardly surprising that the Crown Solicitor was unwilling to concede on any points given that the Royal Commission had adopted Campbell's evidence more or less unreservedly. But the question was whether the government would adopt a similar approach, potentially leaving the grievance to fester. The answer to this question came in October 1948, when Meredith's letter was forwarded to the Parliamentary Select Committee considering the recent petition filed by Napia and others. In forwarding his report, the Under Secretary of Māori Affairs noted that the allegations contained in the petition 'were investigated in a very detailed way by the Crown Solicitor at Auckland and Mr. R.D. Campbell whose evidence the petitioners seek to impugn'.[1383] The views of the very people accused of misleading the Royal Commission were thus taken to be definitive in responding to such allegations and were evidently accepted as such by the Māori Affairs Committee as well. Just over a week later it issued its report into the latest petition, refusing to hear any further evidence on the grievances and declining to make any recommendation on the petition.[1384]

With all possible avenues of redress now well and truly blocked, the only question which remained was whether the claimants to the block would finally abandon their

[1382] V. Meredith to Under Secretary of Māori Affairs, 6 August 1948, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, pp.2501-2507].

[1383] T.H. Ropiha (Under Secretary) to Clerk, Māori Affairs Committee, 19 October 1948, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, p.2494].

[1384] Report of the Māori Affairs Committee on Petition No.34/1948, 27 October 1948, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, p.2493].

efforts for further inquiry into their grievances to be undertaken. On this point the government at least had some leverage in the Royal Commission's recommendation that the government contribute £300 towards the costs of preparing the Māori claims to Mokau as a 'gracious act' in recognition that the claimants had been encouraged to pursue their claims by the favourable report of Judge Acheson. Napia had, in fact, already twice reminded the government of this recommendation, but both times suggested that the sum was intended to cover the costs of Te Whiu in making their claim.[1385] He was informed early in November 1948 that the government was 'not at all clear' that the money was intended solely for Te Whiu and that there would probably need to be some agreement between the three different claimant parties represented before the commission as to apportionment of the funds before the government could agree to make the recommended payment. Beyond this, Napia was warned that:

> You make take it, however, as being quite definite that the Government will not be prepared to make any payment unless it can have some sort of assurance that the Maoris will accept the Commission's finding to the effect that there is no merit in the claims which have been put forward, and that they will, for the future, refrain from pressing on the Government any further claims in respect of the land which formed the subject-matter of the Commission's investigations. I understand that you and others have recently petitioned the House endeavouring to make out that the Commission's conclusions were based upon false premises. In these circumstances, I am afraid that a request for a payment of the sort recommended by the Commission cannot even be considered.[1386]

The government was seeking less a full and final settlement of the Mokau claims, than a full and final rejection of them. But given the straitened circumstances of many Northland Māori by this time, and the evident difficulties which the claimants had had in paying their legal expenses, the government's threat was closer to constituting

[1385] Napia to Fraser, 24 August 1948, 4 October 1948, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, pp.2497, 2500].

[1386] Tirikatene to Napia, 19 October 1948 (draft), MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, p.2491].

blackmail than it was to being a 'gracious act'. Indeed, the government's actions in the wake of the commission's report had been anything but gracious, given the adamant refusal to consider the further evidence the claimants had sought to advance, except by way of denial from the two main accused Crown representatives. Now the claimants to the Mokau block were being told that they would have to forfeit their rights to appeal to Parliament – the highest Court in the land – in order to receive the money. Contemporary critics alleged that the first Labour government was beholden to Māori due to its slim electoral majority after the 1946 election, but there would appear to be scant evidence of this in its dealings over the Mokau block.

Shortly before losing office at the end of 1949 Prime Minister Fraser travelled to Kaikohe, where he was informed by Keina Poata that 'the tribes concerned in the Puketi Forest Claim were desirous of asking the Government to set up a new Commission to enquire again into this Claim'. Fraser declared in no uncertain terms that once a commission of inquiry had found no merit in a claim 'it was not possible to appoint another Commission unless new facts were brought forward'.[1387] But the claimants to the Mokau block had been attempting to advance new evidence in the case even before the report of the Royal Commission had been tabled in Parliament, only to find their efforts rejected at every turn.

Not that things were much better under the incoming National government. In August 1950 the Under Secretary of Māori Affairs, commenting on a renewed application for the funds recommended by the Royal Commission, observed that there was 'some danger of the petitioners using the non-payment of the £300 as an excuse for pressing the larger claim' and accordingly suggested that it might be 'best to make the payment...if the three parties to the case before the Commission can agree to an apportionment'.[1388] As with before, such payment would be conditional on the claimants to the Mokau block accepting the Royal Commission's findings on their

[1387] Notes of Representations made to Prime Minister, Kaikohe Pā, 28 October 1949, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, p.2480].

[1388] Under Secretary of Māori Affairs to Minister of Māori Affairs, 11 August 1950, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.1, Arch-NZ, [docs, vol.8, p.2476].

grievances as final. There is no evidence that the claimants ever, in fact, agreed to this condition, but despite this the £300 was eventually paid *to their lawyers* in 1952.[1389]

The Crown's overriding objective in making this payment was obvious enough. Officials had long feared that claims on the Mokau block were merely the tip of the iceberg. Any re-opening of the case risked producing another result like that of the Acheson inquiry, rejected in a rather clumsy and transparent way by the Chief Judge of the Native Land Court and with greater legal finesse (if equal disregard for the Treaty) by the Myers report. Under the circumstances £300 probably seemed a small price to pay to make the issue go away, though suppression of the claim did not equate to extinguishment of the grievance, which remains very much alive today.[1390]

[1389] Under Secretary of Māori Affairs to Hall Skelton, 31 March 1952, MA 1 (Box 121) 5/13/75, Petition 107/1944 pt.2, Arch-NZ. The sum was split equally between the counsel appearing for the three different claimant groups who had appeared before the Myers Commission.

[1390] The author was privileged to join a site visit to the Puketi State Forest with members of the Te Waimate Taiamai Claims Alliance Committee and other invited historians on 30 November 2005, at which time the importance of the Mokau block to members of the claimant community, and grievances associated with its acquisition by the Crown, were fully underlined.

# 7. Northland Crown Purchasing, 1840-1865: Issues Arising[1391]

## 7.1 Reserves

One of the most striking features of Crown purchasing in Northland was the paucity of reserves set aside for Māori use and occupation, notwithstanding the fact that the region contained one of the largest Māori populations in the country. Of the just over 120 separate Crown purchase transactions conducted between 1840 and 1865 just 25, or about one-fifth, included specific reserve provisions for Māori. In a few other instances reserves were indicated on the plans, though without any explanation as to their status. Either way, it is clear that Crown purchases in Northland which included provision for reserves were a decided minority. In many instances the reserves were poorly documented and described in the deeds, creating ample opportunity for confusion as to their status of the kind seen in relation to the Mokau reserve in the previous chapter. And in all but a handful of cases, the reserves carried no official status as such, but were simply deemed to be exclusions from the transactions, rather than permanent tribal endowments. This made it all the easier for these to be subsequently alienated, including a number of cases in which the reserves from earlier Crown purchases were in turn purchased by the Crown in the pre-1865 period. Governor Grey had argued in 1848 that the enhanced value of the reserves was a key component of the 'real payment' Māori received for their lands. In all too many instances in Northland the vendors either did not receive this payment at all, or if they did found it slipped through their hands soon after.

Yet ensuring Māori retained an adequate land base for their present and future needs had formed an integral component of professed Crown policy from the time of Normanby's instructions onwards. And there was also early official recognition that substantial pre-1840 transactions in the north, combined with the large population,

[1391] This chapter covers similar material to chapter 5, but is organised on a thematic rather than district basis. In order to avoid lengthy duplication of sources cited earlier in the report in many instances the chapter refers to particular examples without traversing the full range of evidence on these. Readers are encouraged to consult the earlier chapter for such sources.

had left Māori in the area in a delicate position. In fact, some Crown officials believed the northern tribes had few lands which they could safely alienate without injury to their own long-term wellbeing. The Chief Protector of Aborigines, George Clarke Snr., was not only familiar with the torrent of pre-1840 land deals in the north, but had participated in a few of the deals himself. In November 1843 he wrote that:

> in the northern district, inhabited by the Ngapuhi generally, there are at least one hundred hapu, or small tribes, embracing a population of about 20,000 souls resident in the country lying between the North Cape and Bream Head. Now, assuming the quantity of land contained within these limits to be about 5,000 square miles [3,200,000 acres], we cannot average more than 1,500 as available for agriculture. This computation, if correct, would give about 15 square miles, or 10,000 acres of available land for each hapu, and as they require a large piece, independent of their cultivations, for pig runs, it would leave but a small block of desirable land eligible for disposal to Government, and as their independence is only to be maintained by holding possession of their land, I think it would not only be difficult, but very injurious to them to purchase large blocks of country, even if offered.[1392]

From the perspective of the Chief Protector this led to the inescapable conclusion that:

> They can dispose of small portions of land without embroiling themselves with their neighbours, and with manifest advantage, but in attempting to dispose of large tracts of land they are certain either to injure themselves or to come into collision with others.[1393]

Governor FitzRoy told a gathering of chiefs in Auckland in March 1844 that he was 'very desirous that you should not part with much land', and although prepared to allow them to transact small areas with settlers added that 'looking forward to many years hence, for your own sakes, I will not consent to your alienating those portions of

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[1392] Clarke to Colonial Secretary, 1 November 1843, *Epitome*, C, p.154.

[1393] Clarke to Colonial Secretary, 1 November 1843, *Epitome*, C, p.154.

ground which I know you will want'.[1394] As noted in chapter 2, FitzRoy's comments at this hui earned him a sharp rebuke from the Colonial Office.

The enhanced value of the reserves set aside for Māori out of Crown purchases was, however, as noted earlier, a critical factor in Grey's expanded programme of land-purchase after 1846, even if, as Alan Ward has noted 'Grey's record in reserve-making generally was abysmal...and at best patchy'.[1395] But as Chief Commissioner from 1854 onwards, McLean at least appeared to place more emphasis on ensuring that adequate reserves were set aside as permanent tribal endowments. In July 1854 he informed the Colonial Secretary that:

> The Native reserves in New Zealand consist...of blocks of land excepted by the Natives, for their own use and subsistence, within the tracts of land they have ceded to the Crown for colonization, and in general there has been a distinct understanding that they should not at any time be called upon to alienate any lands so reserved, it being considered essential for their own maintenance and welfare to retain them. Those lands are in general cultivated and occupied by the Natives, and in most instances the reserves are sufficiently extensive to provide for their present and future wants.[1396]

Johnson's initial purchase instructions from the Colonial Secretary in November 1853 stated that he should proceed to Whangarei 'to negotiate [the] purchase of as extensive a block of land as possible', without any rider as to ensuring Māori retained sufficient lands for themselves or detailed requirements as to reserves, other than that these and other particulars of any proposed transactions should be reported to the government prior to any purchase being completed.[1397] McLean's subsequent instructions to Johnson, issued in May 1854, were somewhat more carefully drafted. Johnson was to use his utmost exertions to 'acquire from the Natives the whole of

[1394] Minutes of a Meeting of Native Chiefs, 26 March 1844, GBPP, 1845 (131), vol.4, pp.43-44, [docs, vol.16, pp.5374-5375].

[1395] Ward, *National Overview*, vol.2, p.141.

[1396] McLean to Colonial Secretary, 29 July 1854, *Epitome*, D, p.21.

[1397] Colonial Secretary to Johnson, 7 November 1853, *Epitome*, C, p.55.

their lands...which are not essential for their own welfare, and that are more immediately required for the purposes of colonization'. Beyond this, Johnson was to ensure that 'a clear understanding respecting the external boundaries of the lands they dispose of, and the blocks they retain for their own use' was in place, through utilising natural boundaries wherever possible to mark off any reserves. And he was further instructed to impress upon Māori the advantages of repurchasing lands under Grey's March 1853 land regulations in order to substitute 'their present precarious and unsatisfactory tenure for a permanent holding under the Crown'.[1398]

The remarkably brief instructions issued to Kemp upon his appointment as District Commissioner for the north in June 1855 made no mention of reserves or any requirement to ensure Māori retained a sufficiency of lands for their own use when negotiating purchases.[1399] But in November 1855 more detailed instructions were issued in which Kemp was informed that:

> In making preliminary negociations for the purchase of lands, it will be necessary for you to enquire the extent of land that has already been alienated by the natives, as well as the extent, capabilities, and position of those unalienated lands which they may now wish to dispose of; the price for which (subject to ample reservations for their own present and future wants) such lands can be obtained by the Crown; and whether the payment for it can be judiciously extended over a period of years....[1400]

Kemp was also urged to ensure reserves were 'distinctly marked by natural boundaries' wherever possible, both in order to reduce surveying costs and to prevent future disputes as to their location 'from the unalterable nature of such boundaries'. McLean further suggested that in making arrangements for the purchase of land Kemp might find it advisable 'to issue a few Crown Grants, of from ten to one hundred acres each, to four or five of the principal Chiefs out of the lands they surrender to the Crown'. Rogan, who had been appointed District Commissioner for the Kaipara

[1398] McLean to Johnson, 18 May 1854, AJHR, 1861, C-1, p.52, [docs, vol.12, p.3885].

[1399] McLean to Kemp, 1 June 1855, AJHR, 1861, C-1, p.2, [docs, vol.12, p.3862].

[1400] McLean to Kemp, 17 November 1855, AJHR, 1861, C-1, p.4, [docs, vol.12, p.3863].

district in January 1857 and who took over Mahurangi and Whangarei purchasing duties from Johnson by 1859, was likewise urged upon his appointment 'to take care that ample and eligible reserves are made for the use of the Natives, the selection, number, and extent of which must be determined by the wishes of the vendors themselves, and your own discretion'.[1401] Further instructions issued to all District Commissioners in May 1861 reiterated the need to ensure all reserves were defined by natural boundaries wherever possible and in all cases were to be defined and marked off before final payment was made for the block from which they had been reserved.[1402]

The importance of ensuring ample, well-defined reserves were set aside out of purchases, and that Māori were not required to transact lands necessary for their present and future needs, was thus repeatedly emphasised in instructions issued to Crown purchase officers. Why, then, was only about one per cent of the Bay of Islands district reserved, according to one estimate, and why were a succession of large blocks purchased across all four districts without any reserves at all being provided for Māori? Why did District Commissioners frequently note the absence of reserves as a favourable factor in recommending proposed transactions to the government for approval? And why, for that matter, were such statements, and the absence of reserves in the majority of the transactions, not challenged by McLean and other senior officials as directly contrary to Crown policy?

Perhaps the first point to note in endeavouring to address some of these questions is that there is no evidence of any reserve being made in any of the Northland Crown purchases on the initiative of the purchasing officer. In other words, if Northland Māori did not ask for a reserve, they would not get one. On the other hand, there were several instances in which requests for reserves were either rejected outright or their extent greatly reduced by the District Commissioner during the course of negotiations. In some cases Māori clearly did seek reserves, sometimes in the expectation that they would receive a secure title for these in the form of a Crown grant. But in other instances, especially where Māori assumed that their continuing access to the land for

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[1401] McLean to Rogan, 31 January 1857, *Epitome*, C, p.101.

[1402] McLean to Rogan, 3 May 1861 (circular), AJHR, 1861, C-8, p.1, [docs, vol.12, p.3933].

mahinga kai, gum-digging and other purposes would be unimpeded subsequent to the transaction, the need for formal reserves may not have been quite so obvious. Crown officials fulfilling any sort of protective obligation towards Māori might have intervened to set aside formal reserves regardless of whether these had been requested.

Instead, in Northland the District Commissioners appear to have counted themselves lucky if no requests for reserves were made, and sometimes greatly inconvenienced when Māori sought to retain lands considered suitable for European settlement. Hence the substantial reduction in the Ruakaka block reserve, when the area requested by Māori was deemed desirable for the Nova Scotian settlers, or the unsuccessful efforts to convince Te Kiri that he had not in fact specifically requested a reserve at Omaha when the Pakiri block was purchased.

The apparent reluctance of Crown officials to offer reserves reflected a mixture of pragmatism and ideology in practice. Johnson revealed something of this when he informed McLean privately in 1857 that:

> the good Land ought in my opinion to be obtained and a liberal price paid for it – its value will increase the longer time it remains in the hands of the Natives – in this part the bad Land, does not afford pasturage like the stony plains and ranges of the south, but is utterly worthless, and before the country is sufficiently peopled for it to be required, the Native race will have died out, and the Govt. will have the Land for nothing.[1403]

Māori, in other words, did not have any long-term need for reserves as they would not be around to require them. Meanwhile, their present needs could be more than adequately provided for from the inferior lands not immediately required for the purposes of colonisation. Under the circumstances, setting aside reserves out of the quality lands which were then in demand for settlement purposes was entirely

[1403] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3073-3074].

unnecessary – even if such reserves and not the few pence per acre paid by Johnson were supposed to provide the real payment for their lands.

The belief that Māori were a dying race, doomed to inevitable extinction was widespread at the time, and may have been shared by other Crown officials who also proved reluctant to ensure adequate reserves were set aside for Māori. Yet even if the assumption was widely-shared, it did not imply a single policy outcome. Crown officials operating under the 'dying Māori' assumption might just as easily have agreed to provide generous reserves for them on the basis that the government would get such lands back soon enough when the race was wiped out. And as James Belich has pointed out, the theory may have been popular, but it did not have a monopoly on popular or official thought at the time.[1404]

If anything, in fact, a further popular belief that Māori could be saved from extinction through their rapid adoption of European customs and habits appears to have held more sway with officials such as McLean. And since the communal basis upon which Māori held lands under customary tenure was widely considered the root of all evil (or the basis of the 'beastly communism of the pa', as C.W. Richmond famously thundered in Parliament)[1405] it followed that the extinction of native title was deemed a vital part of the 'civilising' process. Reserves which were simply exclusions from the purchases continued to be held under native title, with all of the attendant 'evils' of communal living which this implied.

It was better by far, therefore, from this perspective, to reduce or even eliminate such reserves entirely if possible, in favour of encouraging Māori to purchase back lands under the same regulations by which Europeans purchased lands. Not only would these be held under secure title by way of Crown grant, therefore supposedly justifying the (on the face of it) ludicrous scenario in which Māori who had just sold an area of land would purchase back part of it for ten or even twenty times the sum they had received, but the lands would also be granted to individuals rather than

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[1404] James Belich, 'Myth, Race, and Identity in New Zealand', NZJH, vol.31, no.1, 1997, pp.9-22.

[1405] NZPD, 3 August 1860, p.186, cited in Sinclair, *Origins of the Maori Wars*, p.156.

tribes. The policy was thus intended as a vital part of the whole process of detribalising and destroying Māori society as it then existed. That policy envisaged a landed gentry of Māori chiefs holding their estates under individual Crown grants from the Crown, but requiring significantly less land to live upon as the non-chiefly classes reverted to their correct role in society as 'hewers of wood and drawers of water' for their superiors, in much the same way that the Pākehā labouring classes were expected to do.[1406]

The only problem with this approach was that relatively few northern Māori proved willing to repurchase their own lands from the Crown. Tirarau, to be sure, repurchased 1000 acres out of the Maungatapere block for the sum of £500,[1407] two blocks totalling 516 acres were repurchased out of the Maungakaramea block,[1408] and Johnson managed to prevail upon Te Kiri to pay the Crown £20 for the privilege of retaining a wāhi tapu out of the Ahuroa and Kourawhero block. Yet although Johnson considered the re-purchasing principle 'a very important one to be introduced to this district, where the sellers of land are so fond of making reserves, which are very inconvenient to the settlers, when they can do so without paying for them', he also reported strong opposition to the policy, having 'endeavoured strenuously to...induce the Natives to re-purchase from the Crown any land they may wish to retain in the blocks for themselves'.[1409] Consequently, while land was re-purchased in only a handful of blocks, Crown purchase officials in the north proved unwilling to allow Māori 'free' reserves that might have undermined the already failed policy.

Meanwhile, the reserves as such, being held under native title, were not really regarded as reserves at all, and consequently were considered fair game for subsequent purchases. In 1854 the Surveyor General, responding to a request from the Colonial Secretary for a return of 'native reserves' as called for by the House of

[1406] O'Malley, Runanga and Komiti', p.64; M.P.K. Sorrenson, 'How to Civilize Savages: Some "Answers" from Nineteenth-Century New Zealand', NZJH, vol.9, no.2, 1975, pp.97-110.

[1407] Kemp to Colonial Secretary, 30 January 1855, AJHR, 1861, C-1, p.64, [docs, vol.12, p.3891].

[1408] Johnson to McLean, 8 May 1856, AJHR, 1861, C-1, p.73, [docs, vol.12, p.3895].

[1409] Johnson to McLean, 22 June 1854, AJHR, 1861, C-1, p.57, [docs, vol.12, p.3887].

Representatives, declared that 'in the Province of Auckland there are no Native Reserves in the sense therein alluded to':

> In the Province of Auckland the Government have allowed the natives to retain within the blocks that have been purchased from them ample reserves for their own use and occupation. These portions of land so reserved for themselves by the natives remain as regards their title, precisely in the same state as the bulk of the Native land which has not yet been disposed of by the Natives to the Crown; and the Government have in no case farmed or let them for their benefit, but have left them to be dealt with by the Natives themselves.[1410]

'Reserve' in the Northland context therefore simply meant lands that had yet to be purchased by the Crown, though Ligar supported Crown grants for these being issued, and, unlike many others, considered that these should not solely be granted to the chiefs:

> There is a growing desire among the Natives, that these isolated portions of land should be granted to them, and the time seems to have arrived for so doing; and I should recommend that wherever a Crown title is given, that the land be in the first instance subdivided among the families having claims on it, and that the Grant be not made to the Chief as the sole proprietor.[1411]

The only real question around the issue of such grants, he added, was whether these should be identical to those given Europeans, 'or whether considering the present state of the Natives, the grant should be so worded that the land would not be alienated for a certain number of years'.

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[1410] Ligar to Colonial Secretary, 10 November 1854, IA 1/1855/2662, Arch-NZ, [docs, vol.2, pp.681-683].

[1411] Ligar to Colonial Secretary, 10 November 1854, IA 1/1855/2662, Arch-NZ, [docs, vol.2, pp.681-683].

Governor Browne was also evidently willing to issue Crown grants to Māori for their lands, declaring that he was fully prepared to do so where the ownership of these was 'undisputed and ascertained to be undisputable', provided those who requested the grant paid for the cost of survey. He considered that such grants should be subject to restrictions on the alienation of the lands.[1412] And although his comments were evidently intended to apply to Māori lands generally, there is little doubt that the status of the reserves was a focus of particular attention.

The appointment of a Board of Inquiry into Native Affairs in 1856, headed by Ligar, signalled further interest in this question. Nearly all of the witnesses asked whether it was advisable to give Crown grants to individual Māori approved of this course, though just about all of them placed significant qualifications on this. McLean agreed with the Board's conclusion that grants should be issued to individuals, for example, but feared that the plan could not be carried into effect due to the fact that:

> the natives have of themselves no original idea of a transfer or exchange of land in perpetuity, and...this idea has only of recent years become fully intelligible to them as a matter of bargain and sale, in which light alone can they understand the subject, and in which manner alone could they be induced to give to the Crown such a title as would enable the Crown to issue grants to individuals.[1413]

Despite this, McLean declared that:

> I consider it of the utmost importance that every facility should be afforded to the natives to acquire land by purchase from Government, as this will be the surest means of breaking up their tribal confederacies, and of inspiring greater confidence in that power from which their more secure and permanent tenure is derived. I am aware that to effect this will be a work of time, as existing customs, and the mode of living in communities, will only be gradually

[1412] Browne, memorandum, 28 February 1856, IA 1/1856??, Arch-NZ, [docs, vol.3, pp.789-791].

[1413] McLean to Private Secretary, 4 June 1856, GBPP, 1860 (2719), vol.10, p.307, [docs, vol.17, p.5872].

> relinquished when the natives – naturally a jealous race – feel an entire security, not only in the present, but in the eventual objects and intentions of the Europeans towards them; and nothing will tend so much to induce this confidence as the certainty that they can obtain land which they can leave with an undisputed title to their posterity.[1414]

He also considered that, in certain cases, it might also be found desirable, 'in making arrangements for the purchase of land, to make it a special condition of purchase that certain properties should be secured by the Crown to influential and deserving chiefs and others'.

Yet an 1861 return of Crown grants issued to Māori revealed that the only grants issued to Northland Māori were for the repurchased lands at Maungatapere and the two Maungakaramea sections, which had also been repurchased. All three Crown grants had been issued to Te Tirarau alone.[1415] Johnson, when reporting the desire for reserves in the Maungakaramea block, had noted that these were 'all *bona fide* for the use of the people residing thereon, who wish the deeds to be made out for them as tenants in common'.[1416] And it was probably this case he was referring to when he told the 1856 Board of Inquiry into Native Matters that '[a]n instance occurred in which I found that the natives wished to have a Crown grant, but they preferred holding it in common; they objected to an individual Crown grant'.[1417] No doubt such a course was considered inconsistent with the Crown's assimilationist agenda. Hence Te Tirarau became the sole legal owner of the lands.

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[1414] McLean to Private Secretary, 4 June 1856, GBPP, 1860 (2719), vol.10, p.307, [docs, vol.17, p.5872].

[1415] 'Return of all Crown Grants issued, or in course of preparation, to native subjects of Her Majesty', 3 July 1861, AJHR, 1861, E-6, p.1, [docs, vol.12, p.3952]. A grant of 110 acres at Takapuna had also been made to the Ngāpuhi rangatira Patuone, though only for his lifetime. This had been promised during Grey's first governorship, in order to persuade Patuone to remain in Auckland. Angela Ballara, 'Patuone, Eruera Maihi ?-1872', DNZB, vol.1, pp.338-340; C.O. Davis, *The Life and Times of Patuone, The Celebrated Ngapuhi Chief*, Auckland: J.H, Field, 1876, p.91.

[1416] Johnson to McLean, 10 September 1855, AJHR, 1861, C-1, p.66, [docs, vol.12, p.3892].

[1417] Minutes of Evidence of the Board of Inquiry on Native Matters, 22 April 1856, GBPP, 1860 (2719), vol.10, p.283, [docs, vol.17, p.5852].

A further return was called for at the end of 1861 of '[c]ases where reservations of land for individual chiefs have been made or promised, as part of the consideration in Deeds of Cession', as well as grants promised more generally, and 'General Reserves which have been made in every cession of territory'. The latter heading revealed just 8018 acres had been reserved for Māori across 11 different Crown purchase blocks in 30 separate locations within the Northland area.[1418] No doubt the return was only a partial one owing to the paucity of Crown records. Andrew Sinclair, the government surveyor charged with completing the task, defended the lengthy delay in compiling the list on the basis of 'incomplete' records which had made it necessary for him to examine 'nearly the whole of the correspondence of the Native Department' in order to established what had been reserved.[1419] Yet even so, it was a telling reminder of just how little land had been reserved for Māori within the Northland purchases.

Intriguingly, the return of promised Crown grants deemed to be part of the consideration for the lands purchased listed just one block. It was Mokau, of course, the 200-acre reserve for which was described as having been surveyed (even though it was a further 15 years before it was) and as having been promised to Wi Hau, 'John Betts' (Hone Peti) and Honetana, all of the 'Ngatiwhiu Tribe'.[1420] Honetana and Hone Peti were, as noted in the previous chapter, among the four chiefs to receive a Crown grant for the block in 1878, even though native title to the land had never been extinguished.

Crown agents in the north often targeted the best of the remaining Māori lands for acquisition, so that, for example, at Whangarei many of the lands with harbour frontage had passed out of Māori ownership by 1865, and at the Bay of Islands local hapū were largely shut out of the main centres of what little commercial activity existed at locations such as Russell, Waimate and Kerikeri. The absence of reserves in

[1418] 'Return of General Reserves for Natives which have been made in Cessions of Territory to the Crown', 17 June 1862, AJHR, 1862, E-10, pp.4-5, [docs, vol.12, pp.4084-4085]. A further reserve of 3510 acres on Great Barrier Island had evidently been reserved out of the old land claim of W.S. Grahame.

[1419] Andrew Sinclair, memorandum, 12 February 1862, AJHR, 1862, E-10, p.3, [docs, vol.12, p.4083].

[1420] Abstract of cases in which promises have been made, or engagements entered into by the Government with the Natives, that Crown Grants shall be issued to them, 7 February 1862, AJHR, 1862, E-10, p.22, [docs, vol.12, p.4087].

such locations thus served to further marginalise northern Māori from the economic opportunities they had sought to embrace in transacting their lands in the first place, regardless of what other lands such groups might have retained elsewhere.

At Mahurangi, where the government had endeavoured to acquire all of the district, local Māori were left with little more than what they managed to secure as reserves (along with, somewhat ironically, lands which the Crown erroneously assumed to have owned). But even these more limited holdings appear to have been put to good use. In 1855, for example, the government-sponsored newspaper *Te Karere Maori* reported that:

> Te Hemara, is one of the principal Chiefs of the Ngatirango tribe residing at Mahurangi, on a most valuable reserve, the boundaries of which have been defined by the Government, and in order to make it more sure, we understand, that a Crown Grant has been promised.[1421]

The remainder of the article was dedicated to a glowing review of the progress made by Te Hemara and his people on their Mahurangi 'reserve'. Yet although a Crown grant may have been promised for the Waiwera-Puhoi lands, none was ever forthcoming. Instead, as with all other Northland Crown purchase reserves, the lands were left bereft of any protection from alienation by the Crown and later subjected to the operations of the Native Land Court. In 1866 title was issued to a total of 6691 acres in the Waiwera-Puhoi area. By 1893 the last of this 'reserve' passed out of Māori ownership.[1422] Ngāti Rongo may have been prospering in the mid-1850s, but by the end of the nineteenth century they were more or less completely landless due in no small part to the Crown's failure to ensure their reserves remained as a permanent endowment for the tribe.

Not only were the Northland Crown purchase 'reserves' left without any protection from alienation, but they were not even regarded as off-limits to Crown purchasing in

[1421] *Te Karere Maori*, March 1855, [docs, vol.18, p.6056].

[1422] Rigby, 'The Crown, Maori, and Mahurangi', pp.134-135; Graeme Murdoch, 'Background History of Wenderholm Regional Park', in *Wenderholm Regional Park Management Plan (2nd Review)*, Auckland: Auckland Regional Council, 1995, pp.48-50.

the pre-1865 period. This was all the more remarkable considering the clear policy statements of McLean and other officials that such lands were deemed 'essential' to Māori welfare as a consequence of which there was 'a distinct understanding' that these reserves should never be purchased. In some instances the motivation behind their purchase was clear enough. A reserve less than 400 yards from the entrance to the Kawakawa coal mine was deemed inconvenient and clearly had to go. Wāhi tapu within the township at Russell were equally problematic, whilst Te Kiri's claimed reserve at Omaha was already partly occupied by Europeans. It was clearly unthinkable that they should be turned off the land in order to make way for the chief and his people, especially when the 'dignity' of the government was supposedly at stake in admitting the validity of Te Kiri's claims in the first place.

But in other cases there was no clear rationale behind the purchase of such blocks, other than the fact that they were seen as simply yet more lands held under native title which could be targeted for acquisition. As the Muriwhenua Tribunal observed, in the north reserves could almost literally be 'provided for one day, and then purchased the next'.[1423] The Crown's professed policies with respect to reserves were all very well: the problem was that in the north these were entirely ignored. It is difficult to avoid the conclusion that the Crown's actions in the north with respect to the reserves amounted at best to a reckless disregard for the long-term interests of Northland Māori – and at worst part of a deliberate campaign aimed at rendering northern Māori landless.[1424]

### 7.2 Surveys

A further problem which affected the reserves – unclear boundaries and the absence of any survey or plan of these prior to signing of the deed – applied more generally to a number of the Northland Crown purchases. In fact, it was not until 1856 that Crown policy changed to require surveys prior to completion of the transactions. But as with many other aspects of Crown purchasing in the north, policy was one thing and

[1423] Waitangi Tribunal, *Muriwhenua Land Report*, p.281.

[1424] The adequacy or otherwise of remaining Māori landholdings is, of course, a matter that can only be assessed in the light of further research into the post-1865 period, and in particular the reports of David Armstrong, Dr Terry Hearn and Tony Walzl.

practice something else altogether. The change brought about an increase in the number of blocks surveyed prior to purchase but did not eliminate the old problem of purchases without plans altogether. Under the circumstances, what was being transacted must have frequently been a matter of guesswork all round, as indeed it was for the bulk of the pre-1856 purchases. As Alan Ward has suggested, in such situations, 'Maori consent could scarcely be meaningful'.[1425]

And closely related to this was the question of how the boundaries were described in the deeds. In some cases where the lands had been surveyed, bearings and links measurements were adopted, surely rendering the description incomprehensible to most of the vendors, while in other deeds very loose descriptions were used such as (to cite a random example, a portion of the Omawake deed boundary descriptions) 'skirting the forest along the open ground, until it reaches abreast of the waterfall a little above the old burial ground belonging to "Toko" ma, near the clump of Kauri Trees a little above the crossing place of the Cart Road'.[1426] As Ward comments:

> the use of general place names as identification marks was not adequate to disclose to the Maori parties with interests in the area exactly which land was involved and whether they should express an interest. A walking of the boundaries and a marking of the corners *with* the chiefs involved was, however, entirely practicable and should have been done to identify to Maori interest holders exactly what land was under negotiation. Even a cutting of boundary lines was possible, though very expensive in labour costs in heavy bush. As it was, surveys did not in fact take place till years after the deed's signing, at which point new right-holders came forward and new quarrels broke out.[1427]

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[1425] Ward, *National Overview*, vol.2, p.137.

[1426] Turton's Deed No.30, Province of Auckland, pp.43-44, in Berghan Supporting Papers, vol.6, pp.3458-3459.

[1427] Ward, *National Overview*, vol.2, pp.128-129.

Ironically, the significant shift in policy after 1856 was largely motivated by the fact that even Crown officials were frequently confused or unclear as to precisely which lands had been purchased. McLean, for one, had always been a strong advocate of surveys prior to purchase, but with the establishment of the Land Purchase Department in 1854 the Surveyor General retained responsibility for surveys, meaning the matter was out of his hands. In October of that year the Chief Commissioner unsuccessfully appealed for the surveyors to be placed under his own control, but was instead informed that they would be made available to the District Commissioners on a case-by-case basis as requested, though still reporting to the Surveyor General. Commenting on this cumbersome arrangement, McLean noted that:

> As a general rule when the Natives agree to sell a Block of land the first step is to have its external Boundaries perambulated and surveyed, the Native Sellers themselves pointing out the boundaries of the land they wish to dispose of, the reserves should then be accurately marked off and surveyed, always in the presence of the Natives concerned and this step being a necessary preliminary requires that Surveyors should be always available for this particular service.[1428]

As McLean was effectively stating, surveys were not merely a formality that could be easily dispensed with in order to reduce costs, but a vital part of the very process of defining and negotiating the lands to be transacted, thereby helping to identify the right-holders in these lands, along with ensuring any reserves that might be required were identified and ultimately having a major influence on the price that might be paid for the block. If the surveys prior to purchase were dispensed with – as they were for many of the Northland transaction – then the impact was felt not just in confusion as to the lands sold but in all of these other areas as well.

Yet McLean's emphasis on the importance of early surveys was evidently not shared by other officials. Charles Ligar, the Surveyor General who remained responsible for

[1428] McLean, memorandum, 30 October 1854, IA 1/1854/4132, Arch-NZ, [docs, vol.2, pp.603-604].

making surveyors available to McLean, commented in 1855 that standard purchase practice up until that time was that:

> The persons employed in purchasing the land from the Natives proceeded round the boundaries and marked the different angles, estimated the contents, and furnished the government with sketches and native deeds. This was considered sufficient, and as the object was to acquire one block after another, the necessity for a distinct survey of each became unnecessary, as it would have only shown the manner in which the whole district had been acquired.[1429]

Why bother, in other words, with the cost and bother of surveys if all of the land was eventually going to be acquired anyway? It might provide for an interesting historical record as to the sequence of Māori dispossession but would add precious little other value.

The only problem with this argument was that lands were being handed over to the Auckland Waste Lands Board for sale to Europeans without prior survey. And while it was considered perfectly acceptable to purchase lands from Māori without surveys, it was unthinkable that they should be sold to settlers on the same basis, especially when it was unclear precisely which lands were available for sale. In September 1855 C.P. O'Rafferty, a surveyor attached to the Waste Lands Board, highlighted this issue, observing with respect to the Ruakaka and Mangawhai lands that:

> These Blocks have, I understand[,] never been surveyed, nor their boundaries cut or otherwise defined – they are represented in this office by a rough Sketch, valueless to either the seller or buyer of any part of them. Several farms have been sold here by the Board, & surveyed by the Purchasers but without a General Map of the whole, I am unable to fix the position of these properties, or to form any opinion as to the probable accuracy or otherwise, of surveys, said to have been executed on them at the charge of their respective properties.[1430]

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[1429] Ligar, memorandum, n.d [c. September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, p.722].

This was just the tip of the iceberg. The Ahuroa and Kourawhero block was, he noted, represented on a sketch with 'four ruled lines enclosing the words "not yet explored". This is all I know, or can learn here about it', O'Rafferty added. Meanwhile, various other blocks, including Maungatapere, were, he observed, 'still unsurveyed and...their boundaries are not cut or defined in any other way' and the same applied to Rangitawhiri on Great Barrier Island, 'with the addition that a piece of land has been sold by the Board somewhere in the Block'.[1431]

Charles Taylor, the Chief Commissioner of Waste Lands, begged the Auckland Superintendent to relieve the Board from its 'present embarrassing & almost inoperative position' resulting from the 'very insufficient nature of the information' available on the blocks handed over to it for disposal to settlers.[1432] All the Superintendent, John Logan Campbell, could do, though, was to refer the matter back to the general government to supply the requested information. Ligar, to whom the matter was referred, admitted that:

> As it now appears that the Board cannot deal with the lands in their present state in a satisfactory manner, I would recommend the General Government to "satisfactorily define" the boundaries of all the Blocks of land enumerated in the list handed over to the Board on the 14th March last. By the term satisfactorily defined I understand a survey. This is clearly the duty of the General Government under the present regulations, and although it will entail a heavy expense, I do not see how it can be avoided under the present circumstances.[1433]

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[1430] C.P. O'Rafferty, memorandum, n.d. [c.September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, p.716].

[1431] O'Rafferty, memorandum, n.d. [c.September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, p.717].

[1432] C. Taylor to Superintendent, 18 September 1855, IA 1/1855/3714, Arch-NZ, [docs, vol.2, pp.712-714].

[1433] Ligar, memorandum, n.d. [c. September 1855], IA 1/1855/3714, Arch-NZ, [docs, vol.2, pp.721-722].

If the external boundaries could not be 'satisfactorily defined' without a survey when it came to selling lands to settlers, then there was no reason to suppose that they were any clearer when the blocks were being purchased from Māori.

The double standard involved was rather too obvious and McLean took the opportunity presented by the 1856 inquiry to again raise the anomaly, writing that:

> In the purchase of lands I have directed that the external boundaries of each block should be perambulated in the presence of the native owners; that the reserves for their own use should be carefully surveyed, and that, whenever practicable, such reserves should be situated within natural boundaries, as rivers, streams, ridges, or other conspicuous features of the country, which would always remain as permanent land-marks that could not be subsequently disputed.
>
> As yet no provision has been made for effecting these surveys, although they form an indispensable part of the purchasing operations....The district officers have also in some instances made sketches of the lands they purchased, but I find that this additional duty retards and interferes with the more important one of conducting the negotiations with the natives.[1434]

McLean's latest representations on this subject finally seem to have secured him the necessary surveyors previously denied the Land Purchase Department. In September 1856 H.T. Kemp was informed that W.B. White's services as a surveyor had been secured,[1435] while Andrew Sinclair was despatched to Whangarei soon after. Both Kemp and Johnson were now informed that '[t]he boundaries of each block must be carefully perambulated, as well as the reserves for the Natives, and a plan made of the same to be attached to the Deed of Sale before any payment is made to the Natives'.[1436]

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[1434] McLean to Private Secretary, 4 June 1856, GBPP, 1860 (2719), vol.10, p.307, [docs, vol.17, p.5871].

[1435] McLean to Kemp, 16 September 1856, AJHR, 1861, C-1, p.11, [docs, vol.12, p.3866].

[1436] McLean to Kemp, 8 September 1856, AJHR, 1861, C-1, p.11, [docs, vol.12, p.3866]; McLean to Johnson, 9 September 1856, AJHR, 1861, C-1, p.73, [docs, vol.12, p.3895].

The new method was soon met with a positive response. In December 1856 Johnson noted that '[t]he Natives are much pleased with the system of surveying the land previous to sale'.[1437] Kemp, meanwhile, had earlier commented privately to McLean:

> I am exceedingly glad to find that the Govt. contemplate Surveys before payments, nothing can be more satisfactory. I hope you will continue to urge it. The expense of external lines wd. not I should think be very great; any qualified Surveyor in the neighbourhood might I apprehend be got to do the work as soon as the negotiations are sufficiently advanced.[1438]

But by February 1857 Kemp had qualified his support for the new method, foreseeing some risk around its implementation. He wrote again to McLean that:

> one thing has given me a good deal of thought and that is the system of survey prior to payments: It is not impossible that in some instances the Natives might change their minds after a survey has been completed, I mean of course with regard to the price already agreed upon, & perhaps even approved by the Govt. & yourself, & in that case, if not finally concluded under the first terms agreed upon, the Government wd. be the loser by the [illeg.] amount of the cost of survey.[1439]

Kemp did not explain why he thought some owners would change their minds as to price following a survey, though obviously if the block was found to be larger than earlier estimated that would be one strong motivation for seeking to do so. Either way, Kemp considered the risk unacceptable and wrote that:

> I am anxious to avoid this if possible: I propose for the future, staking the Blocks off & obtaining as nearly as one can (if a Surveyor is within reach, so

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[1437] Johnson to McLean, 10 December 1856, McLean Papers, folder 354, ATL, [docs, vol.10, p.3102].

[1438] Kemp to McLean, 29 September 1856, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3122-3123].

[1439] Kemp to McLean, 8 February 1857, McLean Papers, folder 368, ATL, [docs, vol.10, p.3130].

> much the better) the area of the block & then coming to terms; I think it would be a saving to the Government & a plan in which there would be no risk involved. I think I should be inclined to adopt the course in preference to waiting until a Survey is finally completed; It wd. in fact be a sort of preliminary survey, I would endeavour to make it answer every purpose the Govt. may require.[1440]

Even before the new policy had been fully implementing on the ground, therefore, District Commissioners such as Kemp were unilaterally changing it to suit their own preferences. As noted earlier, while there was a definite increase in the number of purchases where surveys were carried out prior to the deeds being signed after 1856, there continued to be transactions completed subsequent to this date without prior surveys having been completed. No doubt the owners of the Whakapaku block, for example, might indeed have asked for more money had they known that this was nearly five times the area estimated by Kemp. But given that the block was not properly surveyed until after the deed was signed, they were not privy to such information prior to negotiations being concluded.[1441]

In May 1858 Kemp reported that much of his recent attention had been occupied by the question of surveys, and he again (this time officially) suggested a watered-down version of the survey policy, commenting that 'the simplest form of survey by fixing the principal points, and ascertaining as nearly as possible the area of the land to be sold, would be effectual and binding upon the Natives where purchases become connected, and would for the present entirely meet the wishes of the Government in so far as the extinguishment of the Native title is concerned'.[1442] McLean remained a stickler for decent surveys, however, if not quite as successful at reining in District Commissioners such as Kemp, and replied that although the government was keen to adopt the most economical system of surveys it was even more anxious to ensure that

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[1440] Kemp to McLean, 8 February 1857, McLean Papers, folder 368, ATL, [docs, vol.10, pp.3130-3131].

[1441] Waitangi Tribunal, *Muriwhenua Land Report*, pp.240-244.

[1442] Kemp to McLean, 29 May 1858, AJHR, 1861, C-1, p.26, [docs, vol.12, p.3872].

'surveys are so clear and distinct that no question can afterwards arise respecting the boundaries'. Kemp was accordingly informed that 'His Excellency deems it unadvisable to discontinue the plan of accurately surveying the exterior boundaries of each Native purchase', and reminded that:

> every transaction with the Natives for the purchase of land should be so clear, distinct, and well understood, that no possibility of a question arising in consequence of insufficient surveys should ever exist. The subsequent evils resulting from undefined boundaries are often much greater than the first expense of an accurate survey.
>
> The Government, therefore, expects that each transaction with the Natives of your district shall in every way be so final and conclusive, that there shall be no further embarrassment caused by disputes arising which might have been obviated.[1443]

The following year Kemp was again reminded that '[i]n every instance, the survey of external boundaries should precede the purchase of any Blocks of land that may be offered for sale by the Natives, in order to avoid dispute and misunderstanding relative thereto'.[1444]

Yet just a month later Kemp reported that, in order to avoid any delay in competing the payment for the Kawakawa block, he proposed attaching a 'rough copy' of its plan to the deed.[1445] But when the deed was signed in June 1859 there was no plan at all, 'rough' or otherwise, attached to it, since the surveyed block encompassed a much larger area than was eventually transacted. McLean, either preoccupied with the Taranaki crisis, or simply pleased to have finally secured the valuable Kawakawa lands, does not appear to have queried this glaring breach of stated Crown policy.

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[1443] McLean to Kemp, 28 June 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873].

[1444] T.H. Smith (for Chief Commissioner) to Kemp, 7 March 1859, AJHR, 1861, C-1, p.35, [docs, vol.12, p.3876].

[1445] Kemp to McLean, 21 April 1859, AJHR, 1861, C-1, p.35, [docs, vol.12, p.3876].

Elsewhere, too, the results of earlier lapses were beginning to be felt in much the way that McLean had predicted. John Rogan was a qualified surveyor of many years standing and, as noted earlier, was highly critical of 'the specimen of sketch plans of Johnson's that are now in this office, you know what I mean, the daubs which look as if a quantity of bullock's blood has dropped accidentally on a sheet of cartridge paper and bespattered it all over'.[1446] Prior to the arrival of Sinclair at Whangarei in 1857 Johnson's coarse sketch plans were generally all that was available at the time of the deed signings, and in many instances even these were absent. Rogan reported in 1861 that:

> The chief Arama Karaka, who offered for sale a block of land named Piroa, on which an advance of £100 has been made to him, applied for a surveyor, which was complied with, and in traversing the inland boundary, he insisted upon carrying it into the Waipu purchase, and almost over to the East coast, when the surveyor returned and reported the circumstance. On examining the deed of sale of Waipu, I find that the inland boundary has never been surveyed, which is the cause of the present encroachment.[1447]

Rogan suggested that Karaka should discuss his claims on the Waipu block directly with Johnson, which given that the latter had apparently left the government service by this stage was certainly an interesting approach to take. No plan was attached to the Waipu deed and Johnson had reported in 1854 dispensing with 'the usual and safer method of assembling all the claimants' before concluding the transaction.[1448] Nor is it apparent that walking the proposed boundaries of any area offered for sale in the company of those interested in the lands formed part of Johnson's usual procedures.[1449] Hence many of those who claimed interests in particular blocks were likely to have been oblivious to their supposed purchase by the Crown, especially (as

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[1446] Rogan to McLean, 12 January 1858, McLean Papers, typescript, vol.15, MS-1320, ATL, [docs, vol.9, p.2775].

[1447] Rogan to Chief Commissioner, 5 June 1861, AJHR, 1861, C-1, p.102, [docs, vol.12, p.3908].

[1448] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

[1449] Anderson, p.67; Daamen et.al., p.188.

with blocks such as Waipu) where the land extended into other tribal spheres of influence.

Careful surveys undertaken in consultation with the claimants to the lands were, as McLean recognised, critical to ensuring the integrity of Crown purchases. Yet all too often in the north the process was either absent altogether prior to deed signings, or short-circuited in important ways that made it difficult – and sometimes impossible – for Northland Māori to know exactly which lands were being transacted. Once again, the gap between policy and practice was considerable, leaving Northland Māori the ultimate losers.

### 7.3 Price

The woefully inadequate nature of Crown surveying practices in the north also impacted directly on the question of the prices paid for lands, given that in many cases only rough estimates of a block's area were available prior to the payments being made – and in many other cases no estimate at all was available. Kemp, as noted above, had feared that surveys completed prior to the deeds being signed might lead Māori to demand more money for their lands, but even where early surveys were completed Crown agents in the north remained niggardly in their approach to the question of price.

There is no question that Northland Māori were unhappy with the prices offered by the Crown for their lands. Indeed, this was the most common complaint levelled at the time and the cause of several failed negotiations.[1450] Yet Crown agents such as Kemp frequently twisted this to complain of the 'absurd notions as to price' of northern Māori,[1451] or their 'confused notions of the real value of Land',[1452] all the while boasting of the handsome profits which the Crown would make on their purchases when the lands were resold to settlers. Johnson bragged to McLean that the

[1450] It was also a grievance raised by many rangatira who attended the Kohimarama conference in 1860. Daamen et.al., pp.195-196.

[1451] Kemp to McLean, 16 August 1855, McLean Papers, folder 368, ATL, [docs, vol.10, p.3119].

[1452] Kemp to McLean, 10 May 1861, Le 1/1861/228, Arch-NZ, [docs, vol.5, pp.1838-1839].

Kaurihohore block, purchased for £550 would realise in excess of £3000, while Maungakaramea, acquired for £2800, would sell for over £5000.[1453] In fact, both mark-ups were low by Crown standards, and elsewhere Johnson spoke of acquiring lands for four shillings per acre which would 'readily sell at 30/- or 40/- per acre'.[1454] The latter was more in line with the level at which bragging rights really began to kick in. Kemp, for example, commented that the Okaihau (or Mawhe) block, purchased by him for the sum of £450, was 'thought by good judges to be worth at least £5000'.[1455] Commenting on McLean's purchase of the Pakiri block, estimated at 38,000 acres, for the sum of £1070 (or around 6.75 pence per acre), Rogan flattered his friend, declaring 'you got that Pakiri block at a ridiculous low price[;] the Kauri alone is worth 20 times the sum paid by the Govt.'.[1456] Yet Rogan was not above a bit of chest thumping of his own, and boasted to McLean in 1863 that he had:

> just come from the land office where some of my late Whangarei purchases have been offered for sale and great competition took place[,] the price I dare say averaged 15/- an acre. What do you think of that. I gave 1/- 12 mos. ago.[1457]

Clearly, therefore, Crown agents sought to acquire Māori lands in the north for as little as possible and were immensely proud of themselves when they managed to complete transactions which would realise a healthy profit for the Crown.

The only problem with this was that given Crown pre-emption Māori dissatisfied with the prices offered them had few options available to them. They could not legally lease or sell their lands directly to settlers and were therefore placed in a 'take it or leave it' situation. Although District Commissioners sometimes (such as in the case of the Ruatangata and Mirowhakatiki blocks) agreed to refer disputed prices back to the

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[1453] Johnson to McLean, 8 June 1857, McLean Papers, folder 354, ATL, [docs, vol.10, pp.3059-3062].

[1454] Johnson to McLean, 16 November 1857, McLean Papers, folder 354, ATL, [docs, vol.10, p.3083].

[1455] Kemp to McLean, 17 March 1858, AJHR, 1861, C-1, p.25, [docs, vol.12, p.3871].

[1456] Rogan to McLean, 24 June 1859, McLean Papers, folder 541, ATL, [docs, vol.10, p.3244].

[1457] Rogan to McLean, 7 January 1863, McLean Papers, folder 541, ATL, [docs, vol.10, p.3249].

government for decision, the latter invariably upheld the price recommended by their agents in the field.[1458] As noted previously, it was not as if Crown officials in Auckland were impartial advisors in such matters. Indeed, in nearly every instance in which McLean intervened on the question of price, it was to reject the sum suggested by the District Commissioner as being too high. In no instance did he intervene to object that prices nominated by purchase officers were too low. When Maihi Paraone Kawiti complained directly to the governor over the price offered for the Kawakawa block, McLean's response was limited to a vague suggestion that 'if the land is really valuable and extensive the price should be fairly proportionable to its actual value'.[1459] It was not, in other words, a question of Māori receiving the 'actual value' for their lands, but merely a proportion of this.

The actual proportion in question was variable. McLean's Pakiri purchase had indeed been a bargain, for example, given that sections of the land purchased for 6.75 pence per acre were notified for sale at ten shillings per acre – nearly 18 times the price per acre paid Māori for the same lands.[1460] Similar margins were not uncommon. The Owhiua block, for example, was purchased for nearly six shillings an acre, small sections of which were later advertised at an upset price of £5 per acre.[1461] More typical, perhaps, was the Parihaki block, purchased for about nine pence per acre and advertised at an upset price of ten shillings per acre, or just over 13 times the purchase price.[1462] Further north, of course, especially in the Whangaroa and Bay of Islands districts, many of the lands nominally purchased before 1865 were not taken effective possession of by the Crown or onsold for settlement purposes for decades thereafter, and not all mark-ups were as high as this. But generally speaking, it would appear that Crown officials usually expected to pay Māori no more than about ten per cent of the 'actual value' of the lands purchased from them.

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[1458] Rogan to Chief Commissioner, 16 October 1862 [sic – 1861], AJHR, 1862, C-1, p.377, [docs, vol.24, p.8160].

[1459] McLean to Kemp, 14 December 1858, AJHR, 1861, C-1, p.33, [docs, vol.12, p.3875].

[1460] *Auckland Provincial Government Gazette*, 7 April 1859, no.7, p.48, [docs, vol.14, p.4635].

[1461] *Auckland Provincial Government Gazette*, 2 April 1863, no.8, p.62, [docs, vol.14, p.4655].

[1462] *Auckland Provincial Government Gazette*, 14 May 1860, no.11, p.41, [docs, vol.14, p.4647].

That 'actual value' was, of course, also partly determined by the fact that the Crown had a monopoly on the sale of Māori lands to the settlers, rendering comparisons with the Native Land Court period problematic. Yet it is worth bearing in mind, given suggestions that Māori lands were of no real or intrinsic value until clothed with legal title, that the average price paid for old land claim blocks (according to James Busby) was five shillings and six pence.[1463] Presumably that figure included the multiplier used to convert the price of Sydney goods into their New Zealand equivalent. But even one-third of this rate (22 pence) compared favourably with many Crown purchase blocks. Johnson, for example, had been instructed in 1854 to pay no more than six pence per acre for large blocks of land, and up to one shilling per acre for smaller and more desirable blocks.[1464]

In 1858 *Te Karere Maori* announced that, '[i]n order that our Maori friends may know what Government lands are open for sale', it was henceforth intending to publish the notices of these as received from the Auckland Superintendent. The notices which did appear were almost identical to those in the *Auckland Provincial Government Gazette*, but with one important omission: the modified notices as published in *Te Karere Maori* did not include a column showing the upset prices for each of the sections as appeared in the *Gazette*.[1465] Given that the stated reason for publishing the notices was to encourage Māori to invest in the purchase of lands from the government, this omission was perhaps surprising. Possibly the editor considered the former owners of such blocks might find publication of the upset price rather too upsetting.

What the descendants of the Mokau block vendors found most upsetting in terms of the price paid for the block was, as was seen in the last chapter, the apparent failure to consider not just the land, but also the resources on it, in settling on a price to be paid. Given the significant kauri resources on many of the Northland blocks, and other resources such as the rich coal fields on the Ruapekapeka lands, that issue was a

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[1463] James Busby, *The Rebellions of the Maories Traced to their True Origins*, London: Strangeways and Walden, 1865, p.17.

[1464] Colonial Secretary to Johnson, 22 January 1854, AJHR, 1861, C-1, p.47, [docs, vol.12, p.3882].

[1465] *Te Karere Maori*, 15 April 1858, [docs, vol.18, pp.6109-6112].

significant one. In many cases, such as Mokau and Pupuke, the value of the timber almost certainly exceeded the price paid for the land by many times over (as Rogan had also suggested in relation to Pakiri). And over time the disparity only widened: by 1948, *one tree* on the Mokau block was said to be worth more had been received for the entire block some 90 years earlier. Mechanisms might have easily been put in place to ensure that Māori received some return on such resources (through, for example, receiving a proportion of timber license revenues), but these were never implemented, much less even contemplated.

That Māori knew they were receiving low prices for their lands and yet persisted in transacting these with the Crown was, as noted previously, partly an inevitable consequence of their lack of alternative options. Yet there were other factors involved as well. Johnson later estimated, for example, that when purchasing the Waipu block he had saved some £300 or £400 for the Crown by reminding the owners that they had already transacted the lands with James Busby,[1466] and McLean may have used similar tactics to secure the Pakiri block at a 'ridiculous' price. And in the case of the Kaiwa block, the 'principal claimant' to the land, having requested double the amount the government had offered for the block, soon found this purchased from under his feet in scandalous fashion, as was seen.

More important factors, though, in driving the sales were the perceived longer-term advantages expected to accrue from these. Indeed, an integral factor in the success of the Crown's purchase efforts had been the argument that the 'real payments' for Māori lands was not the 'trifling consideration' received at the time of deed signing, but the ongoing benefits that the vendors would receive subsequently, in the form of the increased value of their remaining reserves, new markets for their produce, schools, hospitals, roads and other sought-after infrastructure. James Belich has described these promised benefits as the 'tacit price' Māori received for their lands.[1467]

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[1466] Johnson to Bell, 13 November 1861, OLC 14-24B, Arch-NZ, in Berghan, 'Supporting Papers for Block Research Narratives Related to Old Land Claims', vol.1, pp.268-269.

[1467] Belich, *Making Peoples*, p.202.

Any assessment of the adequacy of the price received for lands in the pre-1865 period therefore needs to consider not just the nominal (or 'overt') price paid at the time of the deed signing, but also this implied price promised as part of the consideration. Indeed, if northern Māori were bitterly unhappy with the cash price received for their lands, there is much to suggest that it was only the 'tacit price' which persuaded them to enter into significant land deals with the Crown from the mid-1850s. Yet although the enhanced value of the reserves was emphasised by Grey as a key (if not *the key*) component of the 'real payment', the paucity of reserves established in the north, their lack of protection from alienation (and indeed the subsequent acquisition of many of these by the Crown) straight away removed a large part of this promised further payment. Arguably northern Māori ought, therefore, to have received a larger upfront cash payment in order to compensate for the relative lack of reserves. Clearly, however, this did not occur.

But the real jewel in terms of the 'tacit price' for northern lands came with the Bay of Islands Settlement Act of 1858 and associated promises of Crown investment in developing the economy and infrastructure of the region. Those promises, made in person by Governor Browne during his visit to the north in January 1858, and repeated by Grey three years later, marked the commencement of what northern Māori perceived as a renewed alliance of friendship and co-operation with the Crown, of which renewed land dealings was just one aspect. Yet having secured its northern flank, the Crown quickly turned its attentions to Taranaki and Waikato. The promised Crown investment in the north did not follow (at least, not in the period covered by this report) and the supposedly experimental township at Kerikeri, within which Māori and Pākehā would live side by side, was just as quickly forgotten by officials.

The 'real payment' which northern Māori received for their lands was, in other words, by and large ultimately no more than the cash sums received at the time of the deed signings.[1468] Those sums were, by Grey's own admission, 'trifling', though the

[1468] Prior to 1867 Crown assistance in the area of education was limited to subsidies to missionary schools. However, in 1861 Governor Browne observed that there was 'no school at all north of Auckland'. Browne, memorandum, 25 May 1861, AJHR, 1861, E-3A, p.4, cited in Barrington, p.40. Some village day schools were subsequently established in Northland with the support of George Clarke Snr. However, these were ineligible for government funding under the provisions of the Native Schools Act of 1858, which limited financial aid to boarding schools only. See Barrington, ch.1. The provision of health services to northern Māori was, for much of the period covered in this report,

northern leaders, having determined to renew their alliance with the Crown, could hardly be blamed for having faith in the undertakings made by successive governors that many more benefits would result from their decision.

### 7.4 Consultation

At least some Crown officials developed an early appreciation as to the complex nature of customary Māori land rights and the inherent difficulties involved in seeking to extinguish native title. George Clarke Senior's 1843 memorandum on customary tenure warned, for example, that a 'great chief' did not necessarily mean a great estate was held personally by the individual. The Chief Protector noted that 'a man may be a great general, and yet a small landholder; from hence numberless mistakes have arisen among Europeans, who have thought themselves especially safe in purchasing land from a powerful chief, supposing that he must of necessity be a large landed proprietor'. Clarke noted that chiefs and other individuals and whānau could claim specific rights to particular spots or resources such as eel weirs, but added that:

> In other respects their claims and titles become more general; the "hapus" and families claiming, in common with the principal chiefs, what may be very properly termed their waste lands; but even here they must be able to substantiate some sort of title, which is considered equitable, such as having been the first discoverers, having kindled their ovens, built their canoes, or exercised some other such act of ownership which gives *them* the preference upon those lands. The families have, in common with the chiefs, the right of keeping pigs, gathering flax, shooting or snaring pigeons, catching rats, ducks, "kiwi," digging fern root, &c.; every individual of the tribe having and exercising these privileges in common, but still acknowledging the right of some particular family, to dispose of such property; that is, as president, head of the family, or chief of the tribe or "hapu," to make the first proposal for such an alienation; yet they could not consider the purchase valid without the consent of the majority of the principal men of his tribe; and of the payment

limited to the appointment of a number of subsidised Medical Attendants and occasional vaccination efforts. See Dow, ch.1. Health and education services in Northland from the early 1860s through to the turn of the twentieth century will also be traversed in the report of David Armstrong.

> for the same, every individual would expect to receive his appropriate share. Lands that are thus possessed in common, involving the interests of so many claimants, are exceedingly difficult to purchase, and may be reckoned as among the most fruitful sources of their quarrels and disturbances.[1469]

Clarke, the principal Crown agent responsible for the purchase of Māori lands between 1840 and 1842, thus clearly recognised that while a chief might initiate an offer of land, the proposal would need to be endorsed by the rest of the community of owners, and the rights of all parties concerned duly acknowledged in the transaction, for this to be consistent with the basic principles of customary tenure.

When it came to rights between distinct groups, Clarke declared that 'conquest, unless followed by possession, forms no title', from which it followed that 'a purchase [could not] be considered complete and valid without the concurrence of the original proprietors'.[1470] Such factors led him to believe that lands could 'only be acquired by a gradual process of small purchases'.[1471] Yet his apparent appreciation as to the problems innate in attempting to fix customary tenure was undercut by separate proposals that a kind of New Zealand *Doomsday Book*, in which the rights of the various iwi and hapū throughout the country would be registered and recorded for future reference when purchasing lands, should be created.[1472] Such a proposal assumed that fixed and defined rights to land existed in the abstract. But as Alan Ward has observed:

> For a group to define a distinctive piece of land with continuous boundaries as its exclusive property required a substantial modification of Maori tenure, probably involving the related hapu relinquishing interests to each other on

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[1469] Clarke to Colonial Secretary, 17 October 1843, GBPP, 1844 (556), vol.2, p.357, [docs, vol.15, p.5190].

[1470] Clarke to Colonial Secretary, 17 October 1843, GBPP, 1844 (556), vol.2, pp.358-359, [docs, vol.15, pp.5191-5192].

[1471] Clarke to Colonial Secretary, 1 November 1843, GBPP, 1844 (556), vol.2, p.360, [docs, vol.15, p.5193].

[1472] Encl.2, in Clarke to Colonial Secretary, 1 June 1843, GBPP, 1846 (337), vol.5, pp.112-113, [docs, vol.16, 5460-5461].

> either side of an agreed boundary line. Maori would have no cause to undertake this complicated operation unless there was a good and specific reason, such as making a farm or selling land. The very action of land purchasing thus precipitated a process of discussion, definition, and boundary marking, to an extent quite new to Maori society. It was not something that could easily be done in the abstract, or for the remote possibility of a land sale. Either the vendor or the purchaser would have to give some indication of which land was to form the basis of the transaction, and then the process could begin. The definition of interests could, however, become much more precise during a process of negotiation and before any deed was signed.[1473]

It followed from this that the very act of physically marking an area on the ground, of ensuring all interested parties knew such an area was under negotiation, of walking the boundaries of this in the company of all interest holders, of meeting with those groups collectively to publicly debate intersecting or overlapping rights in the area, and to discuss any modifications to the boundaries that might be required, were all essential steps to ensure that any proposed transaction would meet with the necessary minimum requirements for adequate consultation as between different groups.[1474] And when it came to rights within hapū, Crown purchase officers also needed to attend further hui to ensure that, if only a limited number of chiefs were to sign the deed, those rangatira had been authorised to act on behalf of the remaining owners and had made satisfactory arrangements to ensure that the payment would be fairly distributed within the community. As Ward suggests, it is all very well to argue that Crown agents had left such matters to Māori to sort out themselves, but 'paying off the chiefs and making them accomplices in divesting communities of their patrimony, without tangible return, is hardly equitable dealing'.[1475]

All of this was consistent with the principles of customary tenure as enunciated by Clarke in 1843. It was also consistent with the recommendations of the 1856 Board of

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[1473] Ward, *National Overview*, vol.2, p.136.

[1474] ibid., p.165.

[1475] ibid., p.143.

Inquiry. The Board concluded that 'there is no such thing as an individual claim clear and independent of the tribal right', rejected suggestions that chiefs had any right to dispose of tribal lands without the remainder of their community, and reported that 'no tribe has in all instances a well-defined boundary to its land as against adjoining tribes; and...the members of several other tribes are likely to have claims within its limits'.[1476] The Board therefore recommended the adoption of various measures to ensure all potential right-holders received early notice that a block of land was under negotiation (such as early publication of this fact in *Te Karere Maori* and a fixed period within which other groups could notify their claims on the land), and emphasised the importance of the proposed boundaries being walked by all parties, and the limits of the area physically marked on the ground, at an early stage in proceedings.[1477]

McLean suggested that the delay involving in publishing notice of a proposed transaction 'would in most instances, be prejudicial to the negotiations', and asserted that 'the natives would not submit to a forfeiture of their claims, in the event of their not appearing within a limited or given time to represent them; and any attempt to enforce such a condition would be regarded as an arbitrary and unjust interference with existing rights, which they would most certainly resist'. He further suggested that the method of paying the consideration by instalments allowed adequate opportunity for groups who had not been a party to the original transaction to subsequently come forward and receive compensation for their interests, whilst failing to mention the fact that the technique was used in only some purchases (and a mere handful of those conducted in Northland).[1478] Evidently the fact that such groups had no say as to whether to retain or sell their interests was of little concern to him.

But at least McLean was unequivocal on the issue of communal rights, declaring that 'I do not think that any native has a clear individual title to land in the northern

[1476] Report of the Board of Inquiry on Native Matters, 9 July 1856, GBPP, 1860 (2719), vol.10, p.237, [docs, vol.17, p.5826].

[1477] Report of the Board of Inquiry on Native Matters, 9 July 1856, GBPP, 1860 (2719), vol.10, p.241, [docs, vol.17, p.5830].

[1478] McLean to Private Secretary, 4 June 1856, GBPP, 1860 (2719), vol.10, p.307, [docs, vol.17, p.5872].

island'.[1479] That was more than he could bring himself to admit by 1860, when he declared that there was '[n]o fixed law on the subject...except the "Law of Might"'.[1480] As a number of historians have observed, McLean's radically different conception as to the nature of customary rights by this time was hardly surprising given the context.[1481] War had broken out at Taranaki over the very issue of land purchased from only some of the owners and against the explicit wishes of others, a civil war had been fought at Hawke's Bay in large part due to secret land dealings conducted with compliant chiefs, and in general as Māori opposition to land sales hardened there had been a corresponding decrease in the standards of purchasing adopted by Crown purchase agents. The apparent consensus as to the complexity of Māori land rights evidenced from 1856 had been abandoned over the next four years in favour of a more flexible approach which allowed Crown agents to 'interpret' custom in a manner most convenient to whatever their particular purposes might be at any given time.[1482] Expediency reigned supreme when it came to purchasing lands.

In the north, where standards were admittedly never very high to begin with, their deterioration after 1856 can be clearly seen in the appalling Kaiwa purchase of 1857, discussed at length in chapter 5. Here the question at issue was not one of Crown ignorance as to competing interests in the land. Johnson and McLean knew only too well that several different groups had claims on the block – and indeed the former had prepared a draft list of signatories to the deed reflecting this reality.[1483] The problem, as Johnson reported it, was the insistence of Te Tirarau that he should receive the entire purchase money for the block himself, without condition; and the Crown's dilemma was that, whilst the other claimants to the block were 'not strong enough to

[1479] Minutes of Evidence of the Board of Inquiry on Native Matters, 17 April 1856, GBPP, 1860 (2719), vol.10, p.303, [docs, vol.17, p.5868b].

[1480] Minutes of Proceedings of the Kohimarama Conference, 18 July 1860, AJHR, 1860, E-9, p.11, [docs, vol.12, p.3838].

[1481] Angela Ballara, 'Tribal Landscape Overview, c.1800-c.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts', (Report commissioned by CFRT), September 2004, p.636; Ward, *National Overview*, vol.2, pp.159-160; Daamen et.al., pp.168-169.

[1482] Daamen et.al., p.168.

[1483] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, p.3069].

withstand him' on this point,[1484] Tirarau 'would not only have stopped the sale of the 1,372 acres, but also that of the 16,000 acres adjoining to it...and perhaps put a veto on the sale of all the land in the district' if he did not get his way.[1485] If the government conceded to Tirarau's wishes, Johnson commented, it would 'be a triumph of might over right'.[1486] As was seen in chapter 5, faced with potential disruption to its entire purchase programme in the Whangarei district, the Crown instead chose to override the interests of the other claimants to the block, proceeding to sign a deed for Kaiwa with Tirarau alone, and conducting a truly contemptible retrospective 'investigation' into the claims of those previously acknowledged as owners of the block in order to justify their exclusion from the deal. This might easily have been Northland's equivalent of the Pekapeka block had Whangarei Māori been less than favourably disposed towards Europeans generally. The Crown could barely have managed to sink any lower in its land dealings with Māori.

The more typical approach to purchasing in the north also, however, fell significantly short of the required standards. Indeed, for all of the useful insight contained in George Clarke's 1843 memorandum on the nature of customary tenure, his previous land purchases in the north on behalf of the Crown were entirely at odds with that tenure. Clarke's 1840 Mangonui purchase was objectionable in many ways, including the assumption that Nopera Panakareao alone could transact his undefined right over a poorly described area to the Crown, without reference to (and despite the protests of) other claimants to the lands.[1487] Clarke defended his actions on the basis that he had purchased Panakareao's interests only, leaving the rights of other parties unaffected. Yet without any definition of those interests the rights of others were necessarily prejudiced. As Pororua complained, the transaction was 'indefinable...as to which or

[1484] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, p.3067].

[1485] Johnson to McLean, 22 March 1858, AJHR, 1861, C-1, p.86, [docs, vol.12, p.3902].

[1486] Johnson to McLean, 5 October 1857, McLean Papers, folder 354, ATL, [docs, vol.10, p.3067]. Johnson had informed the 1856 Board of Inquiry into Native Matters that one northern chief, Pene Taui, had 'informed me there was not, he thought, one individual native in New Zealand who could lay his hand on a piece of land as large as the table round which we were sitting and call it his own'. Minutes of Evidence of the Board of Inquiry on Native Matters, 22 April 1856, GBPP, 1860 (2719), vol.10, p.283, [docs, vol.17, p.5852].

[1487] Although there were four other signatories to the deed its text was drafted in such a way as to make Panakareao the sole vendor.

what part of the lands he claimed'. Pororua had suggested that if Panakareao had 'named a portion, and defined that portion, he might have acceded to it'.[1488]

Rather than take the hint and belatedly call a hui to discuss customary rights in the area and define the portion conveyed by Panakareao, Clarke instead proceeded to negotiate a deed with Pororua in 1841 on more or less identical terms to the earlier deal. This time the deed purported to convey the interests of Pororua and 'his tribe' (or 'hapu' in the Māori text) to the Crown over the area previously sold by Panakareao, though there was no mention of who that 'tribe' was and no supporting documentation to show that this unnamed group had authorised the chief to act on their behalf. An un-specified tribe's undefined interests over an unclear block of land were thus somehow supposedly conveyed to the Crown, with or without their sanction.

Between them, the 1840 and 1841 Mangonui deeds led more or less directly to inter-tribal warfare at Oruru in 1843. Clarke's equally inept land dealings in the Mahurangi district did not have quite so drastic consequences, though they did lead to at least two decades of tension in the area, including the forcible eviction of several settlers from disputed lands, followed by a plethora of subsequent deeds intended to extinguish residual Māori interests in the lands. Crown agents might excuse themselves for having overlooked the interests of resident groups such as Ngāti Rongo and Kawerau for more than a decade on the basis that they were merely the 'remnants' of an 'exterminated' people, though Clarke's own 1843 memorandum had acknowledged that even supposedly 'conquered' tribes continued to maintain their rights so long as they remained in occupation of their lands. And given that Te Hemara Tauhia's party alone were estimated at 'about 100 individuals', they were a rather large 'exterminated' tribe.[1489]

In fact, the pattern of dealings adopted early on at Mahurangi and Mangonui was echoed in later transactions throughout Northland, with Crown agents simply choosing to negotiate with the first groups to come forward and offer land, and

[1488] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.127, [docs, vol.16, p.5470].

[1489] Johnson to Native Secretary, 24 February 1852 [sic – 1853?], *Epitome*, C, p.139.

assuming that other claimants to the same lands could be dealt with later on. Johnson, as noted previously, had deliberately used this method to overcome opposition to his purchase of the Waipu and Ruakaka blocks, admitting to having avoided gatherings of all claimants to the lands – 'the usual and safer method' – in favour of dealing solely with those who had first come forward to offer the blocks:

> and actuated by this principle, I accepted the offers of the Chiefs who first came forward to sell the Ruakaka, and paid to them the sum of One hundred pounds (£100) for their claims, reserving the sum of Two hundred and fifty pounds (£250) to satisfy the other parties with whom I had not yet come to terms. This decisive step showed the opposition that when the real owners of land are disposed to sell to the Government, it is not to be intimidated by the clamour of disaffected factions, exercising very little, if any ownership at all over the lands sought to be purchased...[1490]

He failed to explain why, if the 'real owners' did indeed favour selling, more than two-thirds of the purchase price had to be reserved for those who had 'yet to come to terms'.

It was suggested in an earlier section of the report that this tactic of purchasing the lands from only some of the owners, forcing other claimants to decide not whether they wished to sell their interests to the Crown, but simply whether they wished to receive payment for these, amounted to a kind of compensated confiscation of land interests, denying as it did those who did not wish to part with their lands the opportunity to exercise this right. This probably helps in large part to explain the relative absence of large hui in the north convened to discuss proposed transactions. Agents such as Johnson and Kemp instead appear to have found it more conducive to successful purchase operations to work through key chiefs perceived as favourable to selling, and relied on the high-standing of those rangatira to ensure there would be little opposition to the deals. Indeed, while Northland contained one of the largest concentrations of Māori in the country in the pre-1865 period, many of the Crown

[1490] Johnson to Colonial Secretary, 20 March 1854, AJHR, 1861, C-1, p.48, [docs, vol.12, p.3883].

purchase deeds were signed by just a handful of individuals. Those chiefs may or may not have been empowered by their hapū to enter into the deeds on behalf of the remaining owners. Given the woefully inadequate manner in which the Northland Crown purchases were documented that is almost impossible to tell. What is clear enough is that the standard of consultation adopted in the Northland purchases was in most instances far from acceptable.

### 7.5 Documentation

A recurring theme throughout this report has been the grossly inadequate documentation produced in support of the Crown's purchases in the north. The point is less that the official correspondence surrounding nearly all of the more than 120 separate transactions in Northland is insufficient to reconstruct the events leading up to the purchases, but rather that it is so deficient as to call into question the validity of many of the Crown's purported purchases. What are we to make, for example, of those transactions where the purchasing officer was the sole witness to the signatures or marks of the vendors? The opportunities for fraud to be perpetrated on a very wide scale were endless. Indeed, the fraudulent insertion of the name of Te Hemara's father on one Mahurangi deed was later openly conceded by Crown officials, and it was suggested in chapter 5 that there is at least a reasonable prima facie case that fraud may also have been perpetrated in relation to the Maungatapere purchase. Two separate deeds for this were produced, an apparently secret one signed by two chiefs in Auckland and described in official correspondence as having 'completed' the purchase on 20 January 1855, and a public one supposedly signed in Whangarei 12 days later by 106 vendors but still to be received by the Land Purchase Department several months later.[1491]

When the first deed for Maungatapere was forwarded to the Attorney General to confirm whether it was sufficient to confirm the conveyance of the land, Frederick Whitaker responded that 'I presume that the Natives understand that by the

[1491] Johnson to Kemp, 20 January 1855, IA 1/1855/2726, Arch-NZ, [docs, vol.2, pp.688-689].

accompanying deed they have parted with all their Interest in the Land'.[1492] His concern, it would seem, was that the deed was too loosely worded to effect a conveyance of the land. A similar point was made by the claimants to the Mokau block before the Myers Commission, where it was argued that the form of deed used did not comply with contemporary requirements for conveyances between Europeans. McLean, apparently challenged on this point in 1856, openly admitted that there were many deeds of cession for lands purchased from Māori 'which would not operate as a conveyance according to the law of real property in force in New Zealand' but observed that these had always previously been accepted as valid conveyances of the land. He further claimed that:

> the final deeds of sale are considered by the Natives as irrevocably binding, whilst an English form of conveyance would be frequently repudiated by them, from the fact that it could not be literally translated so as to be understood by them; and I believe that the only binding treaties with most barbarous Natives have been those that were most clearly understood by them.[1493]

A lesser standard of conveyancing was therefore deemed acceptable for the 'treaties' signed with Māori than applied with respect to transactions between Europeans. And that lesser standard involved not just the adoption of simpler language to express the conveyance but permeated nearly every aspect of the Crown purchasing process in Northland prior to 1865.

It was seen in the Mokau block case study that claimants endeavoured to argue before a Royal Commission of Inquiry that the deed was indeed fraudulent, pointing to the absence of any evidence that public meetings had been held to debate the purchase and hand over the consideration for the block. But ironically the very lack of evidence made it impossible to prove or disprove that this was the case. Ultimately it came down to a question of where the burden of proof resided, and Myers, adopting a narrow set of legal maxims that presumed against fraud unless positive evidence

[1492] Frederick Whitaker (Acting Attorney General), minute, 14 April 1855, IA 1/1855/1132, Arch-NZ, [docs, vol.2, p.611].

[1493] McLean to Colonial Secretary, 5 May 1856, *Epitome*, C, pp.165-166.

could be demonstrated to the contrary, chose to place that burden squarely on the shoulders of the claimants. But if the Crown had been required to prove its title to the land was good, judged against the principles of equity and fairness, it almost certainly would not have been able to do so, and the same applies to nearly all of the other Crown purchases completed in Northland in the period to 1865.

Examples of the extremely loose documentation of the Northland purchases have been pointed to throughout the report and require only brief recapitulation here. These include, as already noted:

- a large number of deeds with no accompanying plans
- reserves shown in the plans but not referred to in the deeds (and vice versa)
- reserves promised to Māori but neither mentioned in the deeds nor shown on the plans
- a general failure to commit promises made as part of the negotiations to the texts of the deeds
- loose or misleading descriptions of block boundaries
- a widespread failure to clearly spell out overlaps with previous transactions
- inaccurate or misleading dates stated in deeds
- the failure to name tribes whose lands are supposedly being purchased in the deeds
- the failure to clearly note instances in which deeds were signed by proxies on behalf of others
- inconsistent or misleading names used for blocks under negotiation
- incomplete translations of deeds
- inconsistencies between the consideration stated in some of the deeds and the amounts acknowledged as having been received
- purchasing officers acting as sole witnesses to deeds
- the failure to document the process by which all groups with potential claims on a block were notified of its proposed sale
- the failure to document the process by which payments were to be distributed between groups

- the failure to document any hui (if held) to discuss customary rights in blocks the subject of proposed transactions and the decisions reached at these
- the failure to record whether the signatories to the deeds were simply transacting their own interests or acting on behalf of a wider group and (if the latter) the failure to record any evidence that the non-signing owners had consented to such an arrangement and would be appropriately recognised in the distribution of the money.

Nearly every aspect of the purchasing process, in other words, was the subject of deficient documentation. Considered in isolation, some lapses were less serious than others, but taken together it is enough (as suggested previously) to call into question the integrity of most Crown purchases in Northland.

Perhaps this was not surprising in a system which allowed H.T. Kemp to continue purchasing lands for the Crown nearly a year after he had been dismissed from office, using funds earlier advanced him for the purchase of lands to pay his own salary for all of this time. It was not as if officials were unaware of the problems. In 1857, for example, McLean condemned deeds drafted by Kemp as 'vague' and 'objectionable'.[1494] In 1865 they were still being dismissed by Kemp's superior's as 'very unsatisfactory'.[1495] Yet no one evidently challenged Kemp's statement that Wiremu Hau was '*the* seller' of the Mokau block,[1496] much less requested further details as to the other owners of the land; and nor, for that matter, did they take issue with Johnson's assertion that the large Maungatapere block was 'the hereditary family possession' of just two chiefs.[1497]

The fewer questions asked, perhaps, the better. If the District Commissioners did attend hui to learn about the various customary interests in the blocks they were seeking to purchase then one can only assume that they would have had every

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[1494] McLean to Kemp, 21 December 1857, *Epitome*, C, p.9.

[1495] Rolleston to Kemp, 8 March 1866, MA 4/8, Arch-NZ, [docs, vol.5, p.1636].

[1496] Kemp to McLean, 1 July 1858, AJHR, 1861, C-1, p.28, [docs, vol.12, p.3873]. Emphasis added.

[1497] Johnson to McLean, 20 November 1854, AJHR, 1861, C-1, p.62, [docs, vol.12, p.3890].

incentive to forward details of these meetings to the government in order to provide supporting evidence as to the careful and scrupulous manner in which they had proceeded with their negotiations. The absence of such reports suggests these hui were rarely held. In these circumstances knowledge that sales had taken placed must inevitably have been limited, though given that in many cases the purchases were merely nominal or paper ones until the lands were taken effective possession of by the Crown (sometimes not until the twentieth century), groups excluded from the transactions by these means may well have continued in occupation of the lands for decades, blissfully unaware that their lands had been 'sold'.

### 7.6 Māori Understanding of the Transactions

Any consideration as to how Northland Māori viewed the Crown's purchase programme in the north between 1840 and 1865 must necessarily consider the cultural context in which those transactions took place. It has been shown throughout this report that northern Māori remained firmly in control of their own world in the period to 1865. Most settlers who lived in the north recognised Crown claims to victory in the Northern War as farcical. Indeed, as was seen in chapter 4, when it came to the ultimate test of where real authority in the north lay – the power of life and death – northern tribes continued to exercise full powers to implement capital punishment against those deemed to have committed serious offences against *Māori law* in the late 1850s, free from arrest or reprisal by Crown officials. The Crown was not, in other words, in a position to impose its views or authority on northern Māori at any point prior to 1865. There is, moreover, no reason to suggest why this should have been any different when it came to land matters. It follows from this that in order to establish that the Crown's own purchases in this period were viewed as absolute alienations it is necessary to prove that Northland Māori had at some point voluntarily abandoned their own unique and highly-developed customs with respect to land matters in favour of those of the Pākehā. Such a scenario is neither convincing nor consistent with the available evidence.

It was widely understood and accepted by early European observers in New Zealand that the notion that land could be 'sold', involving full and exclusive rights

permanently passing to the buyer, was entirely foreign to Māori custom. The question, then, was whether, in the many private deals completed prior to the Treaty signing in 1840, Māori became aware of and accepted such a basis to the transactions. Many of the old land claimants, looking to protect their interests and gain secure titles upon the arrival of the British Crown in New Zealand, understandably had a vested interest in suggesting that Māori had developed such an understanding by the time of their own deals. Yet disinterested observers often suggested otherwise. Charles Terry, for example, commented in 1842 that 'it is well known that, in many instances, they have been induced to sign agreements to part with lands, for which they had not immediate use or occupation, conceiving that they were only disposing of the crop to be raised on that land, or in other words, at a rental'.[1498] Terry considered that Māori were 'in many cases...quite unconscious of what they had really conveyed by these ready-made deeds'.[1499] Edward Campbell made a similar point in 1840, though in a rather more derogatory fashion, in noting that:

> The grand problem, in the solution of which there has always been founded so great a difficulty, is how to acquire an equitable right to the land, even by purchase, from individuals too ignorant to comprehend the common usages, not to talk of the legal formalities of civilized men. A hundred or a thousand acres of land are not a merchantable commodity, which may be alienated at once, and for ever, by merely handing it over to the purchaser for a stipulated sum; for the savage, in making such a bargain, is apt to fancy that he merely confers certain privileges on the stranger, without actually dispossessing himself.[1500]

Campbell described written deeds as 'a mere farce' in conveying the nature of the transactions, but thought Māori somehow still understood that their lands had passed

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[1498] Terry, pp.97-98.

[1499] ibid., p.73.

[1500] Edward Campbell, *The Present State, Resources and Prospects of New Zealand*, London: Smith, Elder and Co., 1840, p.8.

out of their possession. He also observed that, in most cases, the Europeans involved 'allowed' Māori to continue to occupy portions of the lands transacted.[1501]

The astute (and rather more sympathetic) explorer and naturalist, Ernst Dieffenbach, commented in 1843 that:

> In transferring land to Europeans the natives had no further idea of the nature of the transaction than that they gave the purchaser permission to make use of a certain district. They wanted Europeans amongst them; and it was beyond their comprehension that one man should buy for another, who lived 15,000 miles off, a million of acres, and that this latter should never come to the country, or bestow upon the sellers those benefits which they justly expected.[1502]

A similar point was made by Tyrone Power, who observed in 1849 that:

> The misunderstanding with the natives regarding the first sales of land is easily understood, and one can only wonder that we have been able to get undisturbed possession of any land at all. We rather owe it to the dissension among the tribes, and the anxiety of some of them to have us for friends and supporters, than to any abstract right that we are at this day in possession of a single acre.[1503]

Joel Polack, one of the many old land claimants in the north, recalled in 1840 that following one 'purchase' he had made in the area, the chief involved declared that Polack had now 'become incorporated in his tribe'.[1504] The 1856 Board of Inquiry into Native Matters also observed that in early land dealings the title conveyed was 'the right of occupancy' only and that any European involved in such arrangements

[1501] ibid., pp.8-9.

[1502] Dieffenbach, vol.2, p.144.

[1503] Power, pp.129-130.

[1504] J.S. Polack, *Manners and Customs of the New Zealanders*, [Christchurch]: Kiwi Publishers, c.2000 [orig.ed.1840], p.180.

'was considered as one of the tribe, among whom he had cast his lot'.[1505] Robert FitzRoy had, of course, given similar evidence to the 1838 Select Committee on New Zealand, declaring, in response to a question as to whether, based on his observations as captain of the *Beagle* during its 1835 visit to New Zealand, he thought Māori had any understanding as to whether land 'sales' were full and final:

> I do not think they do, because they consider that when a European purchases their Land, he is taken from that Moment under the Protection of their Tribe. All the Purchases have been with the Understanding that the Settlers are to be protected by the Chief from whom they purchased the Land, which appears to me very much like their considering that they still have a Sovereignty over the Land, though they allow those People to make use of it.[1506]

The question of how the pre-1840 land deals were understood by northern Māori is more properly addressed in claimant evidence and research commissioned specifically on that topic. But the point is not unimportant in considering how the post-1840 land deals were understood. And if the evidence of these several contemporary witnesses (and the findings of the Muriwhenua Tribunal) count for anything, then it can safely be said that for present purposes there is no clear evidence that the old land claims were unconditional land 'sales' in the western sense.

That raises an obvious question as to what changed after 1840. Conventionally, this might be asked in terms of when Māori 'understood' what land sales involved. As the Muriwhenua Tribunal observed:

> Outside the academic community, it is still asked...at what point Maori understood the meaning of 'sales', as though, on receipt of that intelligence, they would have ceased to act by their own customs and blithely accept those

[1505] Report of the Board of Inquiry on Native Matters, 9 July 1856, GBPP, 1860 (2719), vol.10, p.237, [docs, vol.17, p.5826].

[1506] Evidence of Robert FitzRoy, 11 May 1838, Minutes of Evidence before Select Committee on New Zealand, GBPP, 1837-1838 (680), vol.1, p.171, [docs., vol.15, p.4971].

> of another country...Even now, it is assumed that the age of Maori contracts has long passed, when in fact they are still maintained.[1507]

The key question, then, is less when Māori comprehended the European notion of a land sale, than at what point the Crown was in a position to impose such an interpretation on the pre-1865 land transactions. And if it was not in a position to do so prior to 1865 (as has already been argued) is there any evidence that Māori voluntarily accepted the Crown/European view of these land deals in this period?

The available material on this point rather suggests not. But before discussing this issue it is worth briefly re-traversing some of the evidence of Northland Māori remaining in control of their own affairs in the period to 1865. The point was well understood by settlers in the north at the time. As the *Bay of Islands Observer* commented in 1842, British sovereignty over Māori in the north was 'entirely nominal'.[1508] Inter-tribal warfare continued to be waged throughout the period covered in this report, despite the best efforts of Crown officials to mediate in such disputes. Killings considered murders by Europeans and government officials but deemed entirely consistent with Māori precepts of justice (that is, essentially viewed in the light of executions justified by serious breaches of tikanga) were also committed, and there are even some suggestions that aspects of the institution of slavery also survived into the 1860s. In 1861, for example, the Kerikeri Resident Magistrate was informed that the government could not condone the claims of a chief to a child born to a woman considered by the rangatira to be his slave.[1509]

Inter-tribal warfare, 'diabolical murders' resulting from 'native superstitions', and slavery were all considered by Crown officials to be among the 'abhorrent' and 'barbarous' Māori customs that were not to be tolerated under British rule in any circumstances. Yet as C.L. Nugent, sent north in 1847 to 'remonstrate' with the chiefs concerning 'the numerous murders' recently committed in the area,[1510] subsequently

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[1507] Waitangi Tribunal, *Muriwhenua Land Report*, p.3.

[1508] *Bay of Islands Observer*, 10 March 1842, [docs, vol.18, p.6206].

[1509] T.H. Smith to Clendon, 5 July 1861, MA 4/4, Arch-NZ, [docs, vol.4, p.1448].

[1510] Grey, minute, n.d. [November 1847], IA 1/1848/325, Arch-NZ, [docs, vo.1, pp.243-244].

reported, 'such dreadful crimes' would continue until such time as the government was 'strong enough in the country to seize and execute the offenders'.[1511] Clearly the government still did not consider itself 'strong enough' to take such action by 1859, when a Crown-salaried chief, M.P. Kawiti, was accused (and openly admitted) condoning the killing of a member of his tribe suspected of practising witchcraft. All Governor Browne could do was to (temporarily, as it turned out) dismiss Kawiti from his government post, and at the same time express his 'deep regret of the revival of a barbarous custom' among northern Māori.[1512] No action at all appears to have been taken against those actually involved in the killing. Their arrest and probable execution would have likely provoked massive Māori resistance and unrest in the north. Crown officials knew only too well that they did not have real and effective control over Northland at this time and wisely chose to refrain from exposing the lie that sovereignty had been gained at Ruapekapeka for all the world to see by actually attempting to exercise it.

It was a similar concern to avoid further embarrassment at the hands of northern Māori which made Crown officials extremely jumpy whenever talk of re-erecting the flagstaff surfaced. Governor Grey may have trumpeted his own successes in public, but more discretely prevailed upon Waka Nene, soon after the nearly-empty pā at Ruapekapeka was occupied by British forces early in 1846, to remove the temporary flagstaff the latter had erected on Maiki Hill. And the following year, when Kawiti expressed his wish to again place a flagstaff on the hill, the governor could not even bring himself to send the rope necessary to haul this up to the site. As Grey appreciated, any further flagstaff would of necessity commit the Crown to its defence, thus further exposing the weakness of its position in the north. And precisely the same considerations prevailed just over a decade later, when the flagstaff was re-erected on the initiative of northern Māori, with only minimal behind-the-scenes involvement from the Crown. As the Native Minister observed on that occasion, anything further than this might have had 'the effect of constituting the new Flagstaff at Kororareka

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[1511] Nugent to Colonial Secretary, 2 January 1848, G 13/1, Arch-NZ, [docs, vol.5, p.1699].

[1512] Smith to Kawiti, 2 November 1859, *Te Karere Maori*, 15 November 1859, docs, vol.18, pp.6130-6131].

Crown property', which was, in his view, 'highly inadvisable'.[1513] That way, at least the pretence of Crown sovereignty could be maintained.

In 1860 Governor Browne observed generally that 'English law has always prevailed in the English settlements, but remains a dead-letter beyond them'. In the north, where the towns were few and small prior to 1865, that qualification was even less relevant than elsewhere, but Browne's further suggestion that the government 'has been continually exposed to contempt from being unable to perform its duty, and has been driven to temporize and ignore aggression or crime, which it could neither prevent nor punish' aptly summarised the situation.[1514] In 1854, for example, the Bay of Islands Resident Magistrate, James Clendon, reported that 'to put the law in force [against Māori] would endanger the property of others and cause an ill feeling that would be difficult to remove'.[1515]

It was with such considerations in mind that in 1857 Governor Browne wrote that it was:

> highly important that the European population should not be more than necessarily isolated; he therefore desires that instructions be given to the Land Purchase Commissioners to use their utmost endeavours to connect and consolidate Crown lands, and not to commence negotiations for the purchase of land, unless adjacent to and connected with Crown lands without special reference to himself.[1516]

Small and isolated pockets of European settlement did little to advance real and effective Crown control on the ground. It was only through the acquisition of large and contiguous land blocks, and their settlement in substantial numbers by Europeans,

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[1513] C.W. Richmond, marginal note on White to Colonial Treasurer, 6 January 1858, IA 1/1858/140, Arch-NZ, [docs, vol.3, p.922].

[1514] Browne to Duke of Newcastle, 1 November 1860, *Epitome*, A.1, p.65.

[1515] Clendon to Colonial Secretary, 15 February 1854, IA 1/1854/708, Arch-NZ, [docs, vol.2, pp.468-470].

[1516] Browne, minute, 4 June 1857, *Epitome*, C, p.166.

that the government could hope to eventually be in a position to enforce the rule of (English) law.[1517] But in the north the settlers did not come in large numbers prior to 1865. And those who did arrive found themselves in an overwhelmingly Māori world.

In 1861 McLean recommended the appointment of a Resident Magistrate for Kaipara and Upper Whangarei because there were 'many new Settlers locating themselves on those Districts, who have no knowledge of the Natives which occasions misunderstandings that might be avoided by the appointment of a judicious officer, acquainted with the Maori language'.[1518] The Resident Magistrate was required, it would seem, in order to try and ensure that settlers' ignorance of Māori customs did not lead to serious problems. In this sense such an official could be seen as useful to local Māori, and McLean wrote in support of his application that:

> It should be borne in mind that the natives of those Districts have alienated large tracts of land to the Government, and that they are prepared to dispose of much more. Their wants should be attended to.[1519]

Commenting in 1856 on proposals that the Crown's right of pre-emption might be partially waived to allow Europeans to purchase their own homesteads directly from Māori, McLean recommended caution, considering that this right should be restricted to actual occupants who had been on the land for at least three years. He observed that:

> In most cases...where Europeans have resided a long period of years on their homesteads they have married Native wives, and their chief object in obtaining a title would be to enable them to leave the land with an undisputed title to their children; so that difficulties with this class of occupants need not

[1517] In 1862 the Land Claims Commissioner, F.D. Bell, boasted that his operations at the Bay of Islands and Mangonui had seen a large area of coterminous Crown and settler land (comprising old land claims, 'surplus' lands reverting to the Crown and government purchases), surveyed and mapped, enabling 'a connected map' of all such lands from Waikato to the North Cape to be prepared. Bell, Report of the Land Claims Commissioner, 8 July 1862, AJHR, 1862, D-10, p.5.

[1518] McLean, memorandum, 13 June 1861, MA 1/1861/86, Arch-NZ, [docs, vol.6, p.1875].

[1519] McLean, memorandum, 13 June 1861, MA 1/1861/86, Arch-NZ, [docs, vol.6, pp.1875-1876].

> be so much apprehended as if they obtained a grant with a view of disposing of the land afterwards to other Europeans, who might in many instances be strangers to Native habits and customs, and might therefore have frequent quarrels and disputes with the Natives, which in remote districts beyond the protection of British law would probably embarrass the Government.[1520]

Beyond mediating in cattle trespass and similar disputes with the voluntary assent of Māori, the ability of Resident Magistrates in the north to enforce decisions against the will of the tribes was extremely limited, and most wisely refrained from even attempting such measures. Johnson noted in 1856, for example, that '[n]otwithstanding a friendly feeling which they cherish towards the settlers, they are not at all inclined to submit to the English laws, except when decisions are given in their favour'.[1521] Many settlers in the north, in fact, accused the Resident Magistrates of consistently favouring Māori in their judgments, knowing full well their ability to enforce a contrary decision was limited. One visitor to the north observed in 1857 that 'there is little redress against a native, although if one of their dogs or pigs is hurt they demand immediate payment. The law does not compel the native to fence his Crops before he can think of asking damages, and they in these out districts laugh at a summons.'[1522] James Burnett, a Whangarei settler successfully prosecuted by local Māori in 1857 when his dog had killed 11 pigs which had trespassed on to his cultivations (the dog in question then being seized by the owners of the pigs in part compensation for the loss of their animals), doubtless spoke for many in the north when he declared, 'is it not monstrous, and yet they tell us that we live under the protection of British law'.[1523]

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[1520] McLean, memorandum on legal acquisition of their homesteads by Europeans, 23 June 1856, *Epitome*, A.1, p.56.

[1521] Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, p.70, [docs, vol.12, p.3894].

[1522] Stewart, 'A Trip in Northern New Zealand', MS 1387, AWMML, [docs, vol.11, p.3697].

[1523] James Burnett to H. Fletcher, 6 June 1857, Micro-MS-666, ATL, [docs, vol.10, p.3336]. More commonly, European-owned cattle or stock trespassed on to Māori cultivations (or, worse, wāhi tapu), in which cases northern Māori did 'not hesitate to carry off the calves by force in satisfaction of their demands'. Johnson to McLean, 3 April 1856, AJHR, 1861, C-1, p.70, [docs, vol.12, p.3894]. European complaints to the government regarding the loss of their stock under such circumstances almost invariably fell upon deaf ears. See, for example, James Shepherd to W.B. White, 4 January 1860, BAVX 4817/7a, Arch-NZ (Akl), [docs, vol.23, pp.7794-7798].

Governor Grey may have talked tough when he told northern Māori in November 1861 that even their chiefs would be subject to arrest and imprisonment for offences, but the reality proved somewhat different. When, for example, in 1864 a young chief of high standing shot another man in an adultery dispute, efforts to arrest the alleged offender had to be abandoned owing to 'the extent of dissatisfaction expressed by all the principal Chiefs not excepting the loyal Tamati Waka to the man's being given up' and the 'mischief' likely to arise if a 'milder course' was not adopted in the case. Significantly, Civil Commissioner Clarke had dared not even venture an opinion in this instance until he had consulted the chiefs.[1524]

Given the persistence of Māori rule over the north, what, then, is the evidence for voluntary abandonment of customs relating to land? The very limited (and in any event culturally skewered) documentary record available on the Northland Crown purchases makes that an extremely difficult question to answer. We have, for example, almost no record of any of the speeches made at the hui at which the deeds were signed, which might usually be expected to provide among the strongest clues as to the motivations and understandings of the vendors in entering into such arrangements with the Crown. By and large, therefore, the strongest evidence on this question comes from considering the consequences of the transactions. Was the nominal alienation of land involved in the deed signings followed by substantive alienation? Or to use an analogy, Pākehā may have got the keys to the house, but did they move in, and did Māori move out? Or did the latter hang around like eager landlords, protecting their property and assuming a discretionary right to use what they wanted?

On these points the evidence is fairly clear: Northland Māori more or less consistently assumed ongoing rights to access lands supposedly sold. In fact, the very first Crown 'purchase' in New Zealand created problems for this very reason. Officials may have assumed that the August 1840 deed signed with Nopera Panakareao had extinguished his interests over lands in the vicinity of Mangonui, but the chief himself appears to have viewed the agreement as merely confirming his authority over this area. Pororua

[1524] Clarke to E.M. Williams, 1 July 1864, Letter Book of the Civil Commissioner, Waimate, 1861-1865 (typescript), MS 375, AWMML, pp.40-41, [docs, vol.11, pp.3604-3605].

would seem to have viewed the arrangement similarly. The lands in question had already supposedly been 'sold' to Samuel Ford in 1839, but both chiefs asserted ongoing authority over the district. Having entered into a preliminary agreement with Hobson in June 1840, Panakareao subsequently warned Pororua 'that the Governor had soldiers and ships of war at his command' which might be deployed in support of his ongoing rights to Mangonui.[1525] This was why the 1841 deed signed with Pororua angered Panakareao so much: he had assumed that the Crown had recognised his exclusive authority over the area, only to find rival chiefs were now also being similarly recognised.

Pororua and his people continued to live on a portion of the lands 'sold' to the Crown long after the transactions had occurred, while the conflict over whose authority should prevail also continued to be waged regardless of the supposed fact that the interests of both chiefs in the lands had already been extinguished. Panakareao warned Commissioner Godfrey in 1843 that 'he had a priority of right over all the land in the neighbourhood of Doubtless Bay' and dismissed the 1840 deed he had signed with the Crown as 'only an earnest of what he was to receive for these lands', but at the same time thought it 'an absolute confirmation and admission of his title'.[1526] Godfrey endeavoured to obtain an admission from Panakareao that his interests had, in fact, been extinguished rather than recognised by virtue of the 1840 deed, but reported that 'there appears to have been so strange a misunderstanding altogether with respect to this purchase, that its assertion was of no benefit to me in the dispute'.[1527] Informed that 'the chiefs will exercise all their ancient rights and authority of every description as heretofore' over the lands supposedly 'sold', Godfrey was forced to accept that he could 'do no more in this affair'.[1528] Willoughby Shortland rather ludicrously instructed that the original deed for Mangonui should be taken to Panakareao so that the chief could see his own signature to it,[1529] but already

[1525] Clarke to Colonial Secretary, n.d. [August 1840], GBPP, 1846 (337), vol.5, p.126, [docs, vol.16, p.5469].

[1526] Godfrey to Colonial Secretary, 15 January 1843, *Epitome*, B, p.7.

[1527] Godfrey to Colonial Secretary, 10 February 1843, *Epitome*, B, p.7.

[1528] Godfrey to Colonial Secretary, 10 February 1843, *Epitome*, B, p.7.

[1529] Shortland, minute, 20 March [1843], GBPP, 1845 (369), vol.4, p.76, [docs, vol.16, p.5417].

the rival parties had gone to war over their claims on the land 'sold' to the Crown. Further Crown 'purchases' of the same lands would be necessary in the 1850s, culminating in another Mangonui transaction in 1863 which was evidently no more accepted as an absolute alienation of the lands in question than any of the earlier transactions had been.[1530]

In the north, where many of the lands purchased by the Crown prior to 1865 were not settled by Europeans or cleared of bush sometimes for decades after this, nominal purchases had no real meaning or discernable consequences on the ground. In these circumstances local Māori continued to utilise such lands for gum digging, mahinga kai and other purposes. Indeed, evidence was given in the Mokau claim that Māori continued to be born, reside on, die and be buried on supposedly government-owned blocks of land long after 1865. As the Muriwhenua Tribunal commented:

> the answer to the question, 'When did Maori understand land sales?', may lie in another: 'When would they have needed to know?' Presumably, Maori understood the meaning of a land sale only at the hard edge of reality, when possession was taken and held without homage to Maori, and when Maori felt unable to effect a remedy. In other parts of New Zealand, the meaning of a sale would have been obvious, as settlers took possession soon after the transaction. But immediate, large-scale possession by settlers did not come in Muriwhenua during the nineteenth century.[1531]

This could have serious consequences in terms of Crown claims to 'ownership' of the land. As T.W. Lewis, the Native Under Secretary, observed in 1883, when discussing ongoing Māori claims to the Ruapekapeka block, 'land...not utilised or sold by the Govt...leads the Natives to continue to assert their claims' to ownership of these.[1532] Hence the descendants of those who had 'sold' the Whakapaku block in 1856 could

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[1530] Waitangi Tribunal, *Muriwhenua Land Report*, pp.251-253.

[1531] ibid., p.199.

[1532] T.W. Lewis to Native Minister (minute), 23 May 1883, MA 13/80, Arch-NZ, [docs, vol.6, p.1989].

petition Parliament nearly half a century later against unauthorised settler occupation of 'their' lands.[1533]

It might be suggested in this case that the petitioners had simply forgotten about the sale of the lands, having had no good reason to be reminded of the fact from the time of the nominal transaction in the 1850s. The same could not be said for the frequent reports in the pre-1865 period of Māori occupying lands 'sold' to the Crown. Governor Grey had evidently felt it necessary to inform northern leaders in November 1845 that:

> You can sell your lands to the Crown, or not sell them, just as you think proper; but, remember, that when once you do sell them, they must be promptly and justly given up.[1534]

Such warnings appear to have had little effect. White reported from Mangonui in 1857 that land matters were causing 'much trouble...one party claiming from another and from the Government. They think they have only to claim and offer for sale, and all is right and that the Government will make as many payments as they like to ask for.'[1535] In 1862 the Russell Resident Magistrate reported that 'of late a practice of occupying "pakeha" land by "Maories" has prevailed in this neighbourhood, and I fear that at some future time trouble may arise on the white purchaser attempting to regain possession'.[1536] The missionary Richard Davis wrote from the Bay of Islands that same year that:

> Even here there are cases in which the natives are resuming their lands, which they had fairly sold to Europeans, and the titles to which had been examined and proved valid in the Commissioners' Court, and for which Crown Grants

[1533] Geiringer, p.68.

[1534] Encl. in Grey to Stanley, 10 December 1845, GBPP, 1846 (712), vol.5, p.14, [docs, vol.16, p.5553]. Another version of Grey's speech recorded him as saying that 'they were to remember that when once sold it was gone forever'. Robert Burrows, Journal, 28 November 1845, cited in Phillipson, p.159.

[1535] White to McLean, McLean Papers, folder 633, ATL, [docs, vol.10, p.3316].

[1536] R.C. Barstow, Report on piece of land claimed by Mata Topi, 19 January 1863, MA 24/21, Arch-NZ, [docs, vol.6, p.1941].

> have been issued. Of course they must be left to do as they like. The Government is not in a position to render protection.[1537]

The following year it was reported that northern Māori were of the view 'that they are at liberty to dig [for gum] upon any unenclosed land, Government or European'.[1538] Even Tamati Waka Nene was apparently at it. James Shepherd complained that Nene was digging gum on 'his' (Shepherd's) land at Whangaroa, only to be informed by the chief that he had every intention of continuing to do so.[1539]

In the Mahurangi district, as has been seen, Māori had long occupied lands purportedly 'sold' to the Crown in 1841. Te Kiri, offered township sections in the district by John Rogan in settlement of his claims to a disputed reserve, reportedly 'considered this over for some time', according to Rogan, 'and when I pressed him for a reply, he said he would not accept from the Government land which belonged to himself, and a discussion ensued which arrived at a point beyond which I did not think it advisable to persevere'.[1540] No doubt the ensuing discussion was a fascinating one, though Rogan was too discrete to commit this to paper.

It was a similar story in the Whangarei district, where local Māori continued to freely occupy and utilise 'sold' lands. In 1863, for example, it was reported that the Maungakaramea block 'was literally in the possession of the Maoris, who were engaged in digging it over for the kauri gum'.[1541] Here, however, the land had actually been settled by Pākehā, and according to the *Daily Southern Cross* these events were 'further evidence of the uncertain tenure by which European settlers hold their land and property in this island'.[1542] It was common for Māori engaged in gum-digging to burn off fern land first in order to obtain easier access to the gum, but one local settler

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[1537] Davis to Coleman, 25 February 1862, in Coleman, *Memoir of the Rev. Richard Davis*, p.420.

[1538] Russell Resident Magistrate's Court, half-yearly report, 14 July 1863, cited in Phillipson, p.176.

[1539] J. Shepherd [to R.C. Barstow], 16 June 1862, BAVX 4817/8b, Arch-NZ (Akl), [docs, vol.23, p.7761].

[1540] Rogan to McLean, 28 September 1859, *Epitome*, C, p.143.

[1541] *Daily Southern Cross*, 27 January 1863, [docs, vol.24, pp.8200-8201].

[1542] *Daily Southern Cross*, 27 January 1863, [docs, vol.24, pp.8200-8201].

complained that 'we are in daily fear that our bush land will be cleared, and the crops burnt off, by fires lighted in this unwarrantable fashion. We conceive that the natives having sold the land, have no right to dig gum on it, and by their incessant firing of the fern, run the risk of destroying the bush; the only portion of his land worth anything at first to an early struggling settler.'[1543]

Those 'early struggling settlers' found themselves still under the protection of local Māori, despite having nominally purchased their lands from the Crown. That 'protection' could be seen in various positive ways. Te Tirarau, for example, is said to have personally visited every recently-arrived settler to the Maungakaramea district and offered to help them in any way he could.[1544] In some cases new settlers were fed and housed by local Māori until they were established in the district, while single men were often provided with wives from the local tribe, further cementing alliances and bonds between the two groups.[1545] And in all cases the chiefs concerned were under an obligation to literally protect 'their' Pākehā from harm's way – failure to do so would be seen as lessening the mana of the host tribe.

But such protection also implied mutual obligations, and among those expectations considered most onerous by at least some settlers was the view that the land and resources 'owned' by the settlers should be available to be shared with the tribe. The Nova Scotian settlers at Waipu, for example, may have sought seclusion from the external world but complained that local Māori had 'no sense of private property, and as a consequence would walk over the wheat fields, appropriate potatoes, or enter houses just as if they were their own property'.[1546] The Anderson brothers at Maungatapere returned from one trip to find that local Māori had 'made themselves at home in our house', exchanging their 'dirty blankets for our own clothes' and bringing produce with them that the pair were expected to purchase as part of their

[1543] *Daily Southern Cross*, 27 January 1863, [docs, vol.24, pp.8200-8201].

[1544] [Author Unknown], *Maungakaramea Past & Present*, [Maungakaramea: Maungakaramea Reserve Board], 1985, p.10.

[1545] Thomas, pp.38-43.

[1546] Gordon MacDonald, *The Highlanders of Waipu, or, Echoes of 1745: A Scottish Odyssey*, Dunedin: Coulls, Somerville, Wilkie, 1928, p.128.

obligations to the tribe.[1547] One family who had purchased land at Parua Bay and constructed their cottage on the site of what was once a Māori track found that local Māori continued to use this route, 'marching in the front door and out the back'![1548] And one incident during the Mangakahia conflict in 1862 involved Paikea 'levying taxes on the Europeans under Tirarau's protection'.[1549]

Even in the district most quickly taken up by settlers following the Crown's purchase programme, then, there is preciously little evidence to suggest that local Māori saw themselves as having parted with their interests in those lands for all time. The transactions in question, and those which preceded them before 1840, had in large part been motivated by the desire to encourage further European settlement of the area, opening up new markets for Māori produce and providing other tangible benefits. William Carruth, an early settler to the Whangarei district, later recalled that, shortly after having 'purchased' his property:

> there was a meeting...held at my house, at which a long discussion took place on the advantages they were likely to enjoy in having a "Pakeha" (white man) of their own. They would now be able to sell all the maize and potatoes they could raise, and they could even sell their pigs at home instead of requiring to drive them to the Bay of Islands for sale. The meeting then passed a resolution that to have a pakeha of their own was good – very good.[1550]

It was the prospect of such benefits, but on a bigger and even more prosperous scale, which had provided a primary incentive for many of the Northland Crown purchases. Indeed, by the mid-1850s the clamour for further European settlement and townships to be established in the north was undeniable. Both were perceived as critical to the economic revival of local Māori fortunes. As *Te Karere Maori* noted in one 1857 editorial:

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[1547] R.S. Anderson, Diary, 10 May 1858, cited in Thomas, p.247.

[1548] W.R. Vallance, *Parua Bay: 100 Years and More*, [Parua Bay: Parua Bay School Committee], 1973, p.33.

[1549] Rogan, memorandum, 15 May 1862, AJHR, 1863. E-4, pp.15-16, cited in Daamen et.al., p.183.

[1550] Rust, pp.59-60.

> The Ngapuhi, who were the first among the tribes of New Zealand to invite the English to settle among them, are now more anxious than ever that their part of the country should be settled by a large European population. This tribe feels confident that no harm will result to them from the introduction of more Europeans; on the contrary, they consider that their poverty arises from having no population to consume their surplus produce, – no means of getting ploughs, carts, horses, harrows, and other implements to improve their waste lands. Therefore, they say:– "Let us have more white people; we have been so long accustomed to them, that we cannot live without them; let our waste lands be purchased by the Government that we may see the country around us improved by having good agricultural farms, with roads, bridges, and other facilities, to enable us to travel with safety and comfort from place to place.["][1551]

It had become a standard plank of Crown purchase policy to promise these and other benefits as part of the consideration for the land: this was 'the real payment', Māori were told. Crown officials were only too well aware of the expectations created as a consequence of such promises. T.H. Smith, for example, writing to McLean regarding the establishment of a township at Kawakawa, commented that, '[t]he natives consider that the Govr. is to a certain extent pledged to form one as they were urged when asking for one to offer a large extent of country'.[1552] And McLean, seeking to promote the further settlement of Northland, urged the adoption of 'liberal and comprehensive measures contemporaneously with the extinction of the Native title', including the allocation of a dedicated portion of the funds received from the re-sale of lands to settlers on investment in the region and the publication of this information in the *Maori Messenger*.[1553] Land deals with Māori were, McLean well appreciated, never simply about the land, but at heart revolved around the relationship between the parties to any deal. Pecuniary consideration, although not unimportant as an

[1551] *Te Karere Maori*, 31 January 1857, [docs, vol.18, p.6073].

[1552] Smith to McLean, 29 April 1859, McLean Papers, typescript, vol.16, MS-1321, ATL, [docs, vol.9, p.2823].

[1553] McLean to Gore Browne, 20 March 1857, *Epitome*, A.1, p.57.

expression of goodwill, was always secondary to the anticipated 'future consequences' in determining the success of any proposed land transaction.[1554]

Those anticipated future consequences, at least in so far as northern Māori were concerned, do not appear to have included their own exclusion from the lands being transacted. They had sought settlers and townships, to be sure, but if subsequent events are any guide not their own displacement from those same lands. Thus while they probably hoped or expected that the arrangements entered into would be permanent ones, this was necessarily premised on the establishment of an ongoing reciprocal relationship with the Crown (and settlers) of mutual benefit to both parties. In this respect, Governor Browne's January 1858 promise to northern Māori of a township 'where the Maori and the Pakeha may sit down side by side, – and form one united community',[1555] with both peoples working together to advance the prosperity and mutual interests of all, was precisely in line with these expectations.

It was much more than mere coincidence that lands north of Mahurangi began to be transacted on any scale only as the relationship with the Crown improved. Without this gradual warming of relations few land deals would have been completed in the north for the plain reason that these were never simply about the land but ultimately were expressions of the nature of the northern Māori relationship with the Crown at any given time. Only when that relationship was seen to be fundamentally sound did the deeds begin to get signed. But even then, it was not so much a case of northern Māori signing away their land interests as inviting others to come and share these. As Alan Ward has suggested, '[t]he line between "selling" in the European sense, and bringing in some Pakeha friends and allies in the Maori sense, was still a blurry one'.[1556]

Eventually, of course, it was the Crown interpretation of such arrangements as absolute land alienations which prevailed – a process which in some instances did not

[1554] Memorandum by the Native Secretary, 25 June 1858, AJHR, 1858, E-1, p.15, [docs, vol.12, p.3785].

[1555] *Te Karere Maori*, February 1858, [docs, vol.18, p.6103].

[1556] Ward, *National Overview*, vol.2, p.170.

take place until the early twentieth century. But that did not make the Crown's view the correct one, much less the just one. Northern Māori had agreed to share their lands and resources with the Crown and settlers but in some cases eventually found themselves left practically landless when substantive alienation (that is, their own exclusion from the 'sold' lands) finally occurred. That was almost certainly not a prospect many of the signatories to the pre-1865 deeds had in mind in agreeing to transact their lands with the Crown.

### 7.7 Later Māori Protests

With the exception of the Mokau block, research undertaken for this report has revealed relatively few formal petitions and appeals relating to the Northland Crown purchases after 1865. Although this may relate in part to the inherent difficulties involved in researching such a subject,[1557] other factors are no doubt also significant. For one thing, as Claudia Geiringer has noted:

> Petitions had to follow a standardised procedure, which included a carefully prescribed written formula and the requirement to present the petition through a member of parliament. Because of these formal requirements, the petitions considered by the Native Affairs Committee represent only the tip of the iceberg, in terms of the body of written protest. Many letters of protest which Maori regarded as "petitions" were never considered by the Committee because they did not fit this official definition.[1558]

Most of these unofficial petitions were later destroyed by fire. But there were also various other ways in which Māori might express their claims on the land – including

[1557] Although not a specific requirement of the project brief for this report, research has been undertaken into petitions and appeals lodged after 1865 with respect to the Northland Crown purchases. However, any kind of comprehensive search of Native Department and Legislative Department files related to this subject would constitute a major research undertaking in its own right. We have therefore relied on keyword searches of Archway by block name, searches of the Legislative Department series lists and sources such as *Maori Land Claims as Recorded in the Appendices to the Journals of the House of Representatives* (Waitangi Tribunal, 1987). None of these methods will produce comprehensive results, given, for example, that petitions sometimes adopted alternative spellings for block names or were recorded solely under the name of the petitioner and not that of the block.

[1558] Geiringer, p.8.

literal claims to these in the Native Land Court, ongoing occupation and utilisation of the lands after 1865 and appeals made locally to the Resident Magistrate or other Crown officials in the district. Many of these local complaints may never have been documented, investigated or brought to the attention of senior government officials.[1559] And given that even the Crown was later often confused as to the basis upon which it claimed ownership to various lands, given the 'crazy quilt of multiple and overlapping' Crown purchases,[1560] old land claims and 'surplus' lands which covered the north, it is hardly surprising that in many instances Māori were unclear as to exactly how their lands had been lost to them.[1561] As the Muriwhenua Tribunal observed, inadequate Crown documentation of its own purported purchases, difficulties in accessing the minimal record that was available, and the onus placed on Māori to make out their case (rather than on the Crown to prove its title) made the task of proving valid grievances existed a mammoth one.[1562]

Compounding these problems was the fact, as noted previously, that many of the nominal land alienations which took place prior to 1865 did not have any real meaning on the ground until much later. By the time that the Crown took possession of the Mokau block in the early twentieth century, for example, resulting in subsequent claims on the land being made, none of the participants to the transactions, on either the Crown or Māori side, were still alive to shed any light on what had transpired in 1859. All that the petitioners could point to was the minute (but apparently complete) documentary record left behind by Kemp and the oral record passed down to the descendants of those involved in the transaction. While the former revealed little about what had taken place, the latter was treated dismissively by the Myers Commission, the report of which dismissed the claims on the block as 'an afterthought' of 'nebulous character'.[1563]

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[1559] ibid., p.4.

[1560] Rigby, 'The Crown, Maori, and Mahurangi', p.2.

[1561] Geiringer, p.5; Waitangi Tribunal, *Muriwhenua Land Report*, pp.335-336.

[1562] Waitangi Tribunal, *Muriwhenua Land Report*, pp.336-337, 344.

[1563] Report of the Mokau Royal Commission, AJHR, 1948, G-2, p.19, [docs, vol.13, p.4508].

The same criticism certainly could not be levelled against Maihi Paraone Kawiti's long-running appeals to the government concerning lands at Kawakawa and Ruapekapeka. The issues involved in Kawiti's claims, which were advanced over a period of nearly two decades, were complex, involving as they did an old land claim, surplus lands, Crown purchases, lands gifted to the Crown and lands taken by it under the Public Works Act for railway purposes. Disentangling the separate components of Kawiti's multi-faceted claim is difficult, as Crown officials discovered in the nineteenth century. Indeed, although the chief appears to have commenced making at least verbal claims on the Ruapekapeka block not long after the deed for this was signed in 1864,[1564] it took officials until 1883 to discover that the lands he was claiming were not part of the earlier Kawakawa Crown purchase. Those lands included Kaiwaka, which as noted previously was one of the two reserves shown on the Ruapekapeka plan as reserves but mysteriously described in the deed as 'declared to be within the Govt. Land', along with an area which Kawiti named as Te Matairiri.[1565] In 1874 Kawiti wrote to McLean, by now Native Minister, with respect to the latter claim:

> What are your intentions respecting my piece of land – Matairiri – [a] portion of Te Kawakawa? It is likely to be a cause of trouble between us; but let it be adjudicated upon by the Court. This question has been held in obeyance [sic] for the last 13 years and it is likely to pass foolishly into the hands of the Government. I think that we should appoint a Committee to investigate it, that it may be satisfactorily settled.
>
> Ko te hea tau whakaaro mai ai koe ki taku pihi ki Matairiri wahi o te Kawakawa nei mea ke waiho tenei mea hei whakapouri i waenganui i a taua engari me tuku ki te koti[.] Ko te tekau ma toru tenei o nga tau a tera e riro

[1564] Kawiti also informed Governor G.F. Bowen, during an 1868 visit to the north, that he wished to talk with him 'about land which was fomerly sold, and which I wish to be returned to me, for it was wrongfully sold'. *New Zealand Herald*, 20 April 1868, in Armstrong Supporting Documents, Sec.1, p.1140.

[1565] Turton's Deed No.50, Province of Auckland, pp.66-68, in Berghan Supporting Papers, vol.6, pp.3480-3482.

> kuare taku pihi i te kawanatanga e mea ana ahau me komiti marie tatou kia o te pai.[1566]

In 1879 Kawiti wrote to Sir George Grey, now the Premier, concerning his claims. Kawiti, who was visiting Wellington at the time, requested that:

> In the first place that the name of the Government be withdrawn from within the surveyed boundary of the piece of land for me and my children, as we are living upon that land in a most unsatisfactory state, all that land was given by me, all the Kawakawa, Ruapekapeka and Waiomio and the Kawakawa Coalfields were included within the survey.
>
> The Committee of native Chiefs and I ceded that land to the Queen[.] I tendered that land in place of Maiki the flagstaff that was cut down by Heke[.] I gave that land publicly, and Maiki as well to Governor Brown [sic], and this is a thought of mine, O Sir George Grey that enquiry should be made into the question of the land that Governor Brown arranged should be a dwelling place for me.
>
> tuatahi me unu atu te ingoa o te Kawanatanga i roto i te rohe ruri o te pihi maku me aku tamariki ka nui te raruraru o matou e noho nei i runga i taua wahi ki taua whenua katoa he mea hoatu e au a te Kawa Kawa katoa tae noa ki te ruapekapeka tae noa ki Waiomio te ruritanga me te koura waro i te Kawa Kawa[.]
>
> na te Komiti rangatira Maori me ahau i tuku atu taua whenua ma te Kuini hoatu ana e au taua whenua hei whariki mo maiki mo te kara i poutoa e Heke he mea ki nui naku te hoatu tanga o taua whenua me maiki kia Kawana Paraone[.]
>
> he mahara tenei naku kia tirotiro hia mai e Kara e Hori Keere [sic] te wahi i whakaritea e Kawana Paraone hei pihi nohoanga moku.[1567]

[1566] Kawiti to McLean, 9 February 1874, MA 13/80, Arch-NZ, [docs, vol.6, pp.1958-1960].

Kawiti's statement that he had given the Crown large areas of land as a mark of peace and renewed friendship with the government following the re-erection of the flagstaff on Maiki Hill was to be repeated by him in much of his subsequent correspondence with the Crown. In March 1858 Thomas Smith, the Assistant Native Secretary, wrote to Kemp that:

> Maihi Paraone Kawiti, and other Chiefs of the Bay of Islands, having repeatedly expressed a wish that the Government would accept a Block of Land at Te Kawa Kawa, in token of their reconciliation, and as a pledge of their loyalty and attachment to Her Majesty the Queen;
>
> I have the honour, by direction of His Excellency the Governor, to request that you will be good enough to obtain the necessary conveyance of the land in question to the Crown (should not objection to your doing so occur to you)....
>
> Should you, however, see any objection to the acceptance by the Government of the land offered, as a gift, you will have the goodness to report your opinion for the information of His Excellency's Government.[1568]

Kemp replied several months later that he had examined the land in question, a 700-acre block of land on the south bank of the Kawakawa River, but considered:

> As a precedent, I could scarcely recommend the acceptance of this land as a gift, but I might suggest that, as negotiations have been entered into with this Chief and his people for the purchase of the whole of the Ruapekapeka Block, of which the above forms a part, it might be very conveniently included, and a small sum allowed by way of compensation.[1569]

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[1567] Kawiti to Grey, 30 June 1879, MA 13/80, Arch-NZ, [docs, vol.6, pp.1999-2002].

[1568] Smith to Kemp, 15 March 1858, AJHR, 1861, C-1, p.25, [docs, vol.12, p.3871].

[1569] Kemp to McLean, 8 June 1858, AJHR, 1861, C-1, p.27, [docs, vol.12, p.3872].

Kemp's recommendation was duly accepted, as a consequence of which he was 'authorized to inform Maihi Paraone, if you see fit to do so, that while His Excellency fully appreciates Maihi's friendship, and the motives which have induced him to offer the land, he cannot accept it as a gift from him, or from any other person'.[1570]

Yet plans to incorporate the proposed gift into the larger purchase ran into a snag. It will be recalled that Kemp's efforts to purchase a large block encompassing both banks of the Kawakawa River broke down in controversial circumstances, as a consequence of which only the north bank (Kawakawa block) was acquired in 1859. The south bank, presumably including the 700 acres in question, was eventually purchased by Kemp in 1864.

Yet significantly, some 20 years after the initial Kawakawa purchase, Kawiti was evidently of the view that all of the Kawakawa and Ruapekapeka lands, rather than just 700 acres had been gifted, rather than sold, to the Crown. Moreover, he was, it would seem, supported in this view by both the Premier and Native Minister in 1879. John Sheehan, in commenting on Kawiti's claims for compensation as a consequence of damage done to some of his lands as a result of two lines of railway having been run through them, commented that:

> In considering the question of the amount that should be paid to Maihi for the damage thus done, regard should be had to two facts
>
> – First, that the whole of the adjoining country was given by Maihi to the Crown as an endowment for the perpetual maintenance of the Flagstaff at Kororareka which had been cut down by his people during the war; and, secondly, when the line was first taken from Kawakawa to the present landing-place Maihi Paraone gave up all lands taken from him for that purpose without compensation although other persons owning other lands demanded and received payment. I am therefore of opinion that the claim should be met liberally....[1571]

[1570] McLean to Kemp, 8 July 1858, AJHR, 1861, C-1, p.29, [docs, vol.12, p.3873].

[1571] J. Sheehan to Grey, 29 July 1879, MA 13/80, Arch-NZ, [docs, vol.6, pp.1993-1995].

Grey approved this recommendation without further comment or query. But a change of government soon after appears to have shelved consideration of the broader grievances raised by Kawiti. In 1881 Kawiti complained that 'for twenty years past have I been appealing to the government to give my lands to me without any trouble but the government have not known how to do so' (ki te 20 tau enei ana ahau kia tukua pai tia mai aku whenua kahore ano te kawanatanga i matau).[1572] Early the following year he complained that he had 'made repeated applications' to the government for compensation for Matairiri but without success, and observed that 'there was much land acquired by you the Government and for which I am very much condemned while I plainly see that my lands that is the Maori lands are taken without any equivalent'.[1573] Soon after this a petition was forwarded to the Premier, signed by Kawiti and 26 others of the Ngāti Hine tribe, declaring that the mana over the disputed lands remained with them, and it was for the government to give a fair price in order to know that it had acquired these pieces.[1574] But the 'petition', not being addressed to the Speaker and members of the House of Representatives or formally tabled by one of their number, carried no official standing and could therefore be safely ignored by the government. T.W. Lewis, the Native Under Secretary, thought 'a simple acknowledgement' would suffice, but meanwhile was more concerned to protect the Crown's interests in the Native Land Court, given some of the disputed lands had been the subject of applications for investigation of title.[1575]

In September 1882, Kawiti's wife, Wiki Maihi Paraone Kawiti, forwarded an application to the Native Minister for the survey of several of the disputed blocks, including Kaiwaka and Matairiri, causing the government to re-examine the case.[1576] But the Assistant Surveyor General assumed Matairiri was part of the Kawakawa

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[1572] Kawiti to W. Rolleston, 12 November 1881, MA 13/80, Arch-NZ, [docs, vol.6, p.1985].

[1573] Kawiti to J. Bryce, 8 February 1882, MA 13/80, Arch-NZ, [docs, vol.6, pp.1979-1983].

[1574] Kawiti and 26 others to the Premier, 21 February 1882, MA 13/80, Arch-NZ, [docs, vol.6, pp.1973-1977].

[1575] T.W. Lewis, minute, 14 March 1882, MA 13/80, Arch-NZ, [docs, vol.6, p.1972].

[1576] Wiki Maihi to Bryce, 13 September 1882, MA 13/80, Arch-NZ, [docs, vol.6, p.1966].

block, and knew nothing of Kaiwaka (even though referred to in the Ruapekapeka purchase deed),[1577] and it was not until the following year that W.J. Morpeth of the Native Department reported that:

> "Matairiri" is not, I believe, in what is known as the Kawa Kawa Block, but in the Ruapekapeka Block, bought on the 11th June 1864. In the plan of the latter I cannot discover the name of Matairiri, but from an inspection of plans of the Kawa Kawa Railway, in the Public Works office, I find the name mentioned there, & that the configuration of the land corresponds with the Native Reserve of 20 acres, called Hori Kingi, marked on the plan of the Ruapekapeka Block I have attached herewith.[1578]

Meanwhile, J.H. Greenway, clerk of the Resident Magistrate's Court in Russell, further muddied the issue in noting that one of the other pieces claimed by Kawiti, Oporiro, had been wrongly awarded to Ngāti Manu by the Native Land Court, despite falling within the boundaries of the Ruapekapeka block. Kawiti, who rejected both of these other claims on the land, had, according to Greenway, proceeded to construct a house in this location 11 or 12 years previously, only to be warned that he was encroaching on government land.[1579]

Yet Kawiti was evidently of the view that the government was encroaching on *his* land, and he was nothing if not persistent. In May 1883 the Native Under Secretary observed that:

> There are several blocks of land in the Bay of Islands district claimed by M.P. Kawiti which are asserted to be Crown Lands. When reference has been made to the Survey Dept. they state that all the Lands are Crown Lands[.] The Natives will not be satisfied unless an enquiry is granted...I am of opinion that it would be both unwise & useless to grant an enquiry in any case where the

[1577] Assistant Surveyor General, minute, 18 October 1882, MA 13/80, Arch-NZ, [docs, vol.6, p.1963].

[1578] W.J. Morpeth to Lewis, 25 January 1883, MA 13/80, Arch-NZ, [docs, vol.6, p.1991].

[1579] J.H. Greenway to Native Under Secretary, 21 August 1883, MA 13/80, Arch-NZ, [docs, vol.6, pp.1961-1962].

> Govt. are satisfied that the Natives have no grounds for their claim & that the land claimed is really Crown Land. Unfortunately land in this position is not utilised or sold by the Govt. & this fact leads the Natives to continue to assert their claims. I beg to recommend that the attention of the Hon. Minister of Lands be requested to the matter with a view of the lands in question being dealt with.[1580]

By 'dealt with', of course, Lewis meant sold. Clearly that was perceived as an easier way of dealing with Kawiti's grievances that actually granting any kind of independent inquiry into these and might have actually succeeded had the government been dealing with anyone less determined than the Ngāti Hine leader. In the end, it was only the death of Kawiti in 1889 that brought a stop to the voluminous correspondence he maintained with government officials over his claims to the Ruapekapeka lands. In 1887, for example, he eloquently reminded the Native Minister, John Ballance, that:

> The term "Native Minister" signifies you as the person appointed to settle all Native troubles, to suppress all evil amongst the Maories, and to support and maintain us in that state which conduces to our well being and advancement, and which also enables the two races to live together in peace and harmony.
>
> Let your administration and management of all affairs affecting the Maori people be just and easy, and let it be your utmost care that nothing bad or unjust be imposed on your Maori people, and that all your care and attention be not confined only to your European people.
>
> Friend, let the Maories be ruled in accordance with their own customs, and let them keep what portions of land remaining [sic] to them, and let not you the Govt. also wrongfully take away these lands from us lest we all become like me who is now bewailing the loss of my land....

[1580] Lewis to Native Minister (minute), 23 May 1883, MA 13/80, Arch-NZ, [docs, vol.6, pp.1989-1990].

> e mea ana tenei kupu te minita Maori he kai whakaoti koe i o te Maori raruraru te rua he kai peehi koe i nga kino i roto i te iwi Maori te toru he kai whaka tika ano koe ia matou kia waiho pai, ano matou e koe i runga i te tikanga e tupu, ai te ora ki te iwi Maori kia haere pai, ai enei iwi e 2 te Maori me te pakeha kia pai rawa to whakahaere i nga ture me nga tikanga ki runga ki te iwi Maori kia tupato rawa koe, kei ma runga tia te mea kino i runga i tenei iwi ou i te Maori kei riro to, awhina ki to iwi, anake ki te pakeha.
>
> E hoa me waiho, ano e koe te tikanga mo nga maori; i runga i to ratou tikanga ano me nga wahi i mau, o nga whenua, ki nga maori, ano, awa e tangohia he tia a matou whenua e koe, e te Kawanatanga kei penei me ahau e mamae nei ahaou mo aku whenua...[1581]

Ballance was somewhat more sympathetic towards Māori aspirations than most other settler politicians at this time, but certainly did not live up to the high ideals as to the proper role of a Native Minister outlined by Kawiti. He did at least grant an inquiry of sorts into Kawiti's claims, instructing James Clendon Jnr., the Whangarei Resident Magistrate, to look into the matter.

Yet Clendon's 'inquiry' was truly pathetic, involving as it did wiring the Native Department for confirmation that Kawiti's name was on the Ruapekapeka deed (which it was), followed by inspection of the plan to see whether any of the claimed reserves were shown (which they were not). Clendon considered that '[t]he original deed would probably set aside any claim he might make hereafter as well as to the present',[1582] and reported that he had:

> pointed out to Maihi Kawiti that had any other reserves been made at the time of the survey than those shewn they would also have been marked on the plan

[1581] Kawiti to J. Ballance, 15 March 1887, MA 13/80, Arch-NZ, [docs, vol.6, pp.2025-2026].

[1582] J.S. Clendon to Native Under Secretary (telegraph), 14 July 1887, MA 13/80, Arch-NZ, [docs, vol.6, pp.2017-2018].

> and that no such pieces of land as he claimed were shewn as reserves consequently he had not any claim.[1583]

Perhaps because he had not viewed the deed itself (or perhaps because he had but found the fact rather too inconvenient to suit his objective) Clendon failed to note that Kaiwaka, one of the reserves, which *was* shown in the plan as a reserve, was declared in the text of the deed to be 'Govt. Land'. In other words, either it was or was not a reserve, depending on whether the text of the deed or its accompanying plan was relied upon.

Kawiti, upon hearing of this latest rejection of his claims, remained defiant, declaring that he had been applying for the restoration of the lands from the 'time of Sir Donald McLean's Government' onwards through successive administrations and Native Ministers and adding 'I shall go on applying for them for ever and ever'. He was, Kawiti added, aware that the government would not pay him compensation for the lands 'unjustly wrested' from him, 'therefore I shall not forget the matter and relinquish my lands'.[1584] In April 1888 he again wrote to the governor, reminding him that:

> I have been making applications year after year to the Government since Mr. Donald McLean's time, and this in consequence of the suffering which I experience at the hands of the Govt. – who are heavily oppressing me. They did not consider and recognise that it was I who restored to Her Majesty the Queen the "mana" of her sovereignty when Hone Heke cut down her flagstaff at the Bay of Islands and that it was I who carried out everything in connection with the setting up of the flag staff, paying the carpenter £100.
>
> I also restored the flag staff and all its requisites to Governor Browne free of cost after that I gave my land away as a gift in honour of the occasion of the restoration of the flagstaff – it also signify [sic], according to the Maori custom, the establishment of peace and a sign of respect for the Queen – and

[1583] Clendon to Native Under Secretary, 10 October 1887, MA 13/80, Arch-NZ, [docs, vol.6, pp.2013-2014].

[1584] Kawiti to the Governor, 7 December 1887, MA 13/80, Arch-NZ, [docs, vol.6, pp.2011-2012].

> peace to both man and the land, consequently that flag was named "Te Whakakotahitanga" (the Union) of the two races, Pakeha & Maori.[1585]

Kawiti also observed that:

> The Government of New Zealand do not at all consider that I gave the land containing probably two million acres, more or less as a free gift to Her Majesty. The coal at Kawakawa is on the land given by me to the Queen and portions left to me are those which I have often named....These were the remaining portions to me, but they have also been wrested from me by the Government, therefore I say that this is a most grievous distress to me & therefore I shall not cease to bring the matter continually before the Government of the Colony.[1586]

Concluding that he could not obtain redress from the colonial government, Kawiti had written to the British Prime Minister on the subject of his grievances, only to be informed that these should be taken up with the local authorities. Yet remarkably, in July 1888 Governor Jervois wrote to Kawiti to 'request that you will cease to write to me on a subject which has been so fully enquired into and decided'.[1587] In other contexts Jervois had expressed his view that 'the Natives generally have been exceptionally well treated in New Zealand & have nothing to complain about'.[1588]

Kawiti's passionate and sustained complaints had fallen not just on deaf ears, but on ears too tired to even bother listening any more. Clendon's 'full enquiry' was farcical even by the standards of most whitewashes, but was considered sufficient to dismiss and ignore Kawiti's grievances. Yet the chief remained true to his word, and continued to write to the government on the subject of his claims until right up to shortly before his death in May 1889.

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[1585] Kawiti to the Governor, 9 April 1888, MA 13/80, Arch-NZ, [docs, vol.6, pp.2006-2007].

[1586] Kawiti to the Governor, 9 April 1888, MA 13/80, Arch-NZ, [docs, vol.6, p.2007].

[1587] W.F.D. Jervois to Kawiti, 9 July 1888, MA 13/80, Arch-NZ, [docs, vol.6, pp.2003-2004].

[1588] Jervois, minute, 27 November 1885, G 49/20, Arch-NZ, cited in O'Malley, 'Runanga and Komiti', p.276.

One claim that was undeniable yet was plagued with problems when it came to the Crown delivering on its commitment was the provision in the Ruakaka deed that 'Ten per cent. of the proceeds of the sale of this Land [is] to be expended for the benefit of the Aborigines'. Some 20 years after the Ruakaka deed had been signed those involved in the original transaction had still yet to see a penny on account of this clause. Meanwhile, a sum of just over £473 had accumulated to the credit of the Ruakaka block according to the Commissioner of Native Reserves, Charles Heaphy, who in 1873 was finally given the task of arranging distribution of the funds. In May of the following year he reported that:

> I went to Whangarei to meet the persons interested in the 10-per-cents, but they were so dispersed at Native meetings and gum-digging that I could make only a few payments. The chief Taurau, and those who were present, representing the sellers, agreed to £236 18s. 5d. being appropriated to education and hospitals, and £16 5s. 4d. to the expenses of administration. This left £220 13s. 1d. for distribution amongst the Native sellers. Finding that the Natives did not come to Whangarei, I convened a meeting for Mahurangi – a central place for the scattered people interested in this and the Mangawhai Block, – but they did not meet me there. Ultimately I found in various places a few more of those interested, and made payments to the extent of £35, but found it necessary to leave with Mr. Robert Mair, at Whangarei, and the Rev. Mr. Gittos, at Kaipara, blank receipt-forms to be signed by certain indicated Natives, to whom I can remit the respective amounts that have been decided upon. I may state that the Ruakaka Natives had entirely forgotten the stipulation relating to 10-per-cents.[1589]

Heaphy may have thought that Ruakaka Māori had entirely forgotten the provision, but the Crown had itself apparently forgotten to keep detailed accounts of revenue received from land sales prior to 1861, as a consequence of which the £473 figure was almost certainly a significant underestimate. In the nearby Mangawhai block, for

[1589] C. Heaphy to Native Under Secretary, 29 May 1874, *Epitome*, E, pp.9-10.

example, the figure Heaphy adopted in 1874 was just over £419, though a modern estimate suggests at least £1017 had accrued on the block by 1865.[1590]

This was, in any event, to be the sole payment made to those interested in the Ruakaka block, although deductions from the fund continued to be made for other purposes. From about 1879, for example, 5% of revenue was deducted to cover the cost of surveys, although even Heaphy remained unsure as to the authority upon which this action had been taken.[1591] Meanwhile just over £200 in total was deducted from the accounts of all nine 'Auckland Ten Per Cent blocks' to cover administration costs, along with other deductions for travel costs and other expenses.[1592]

Perhaps grinding poverty helped to focus the mind, but from the late nineteenth century northern Māori interested in the tenths blocks began petitioning and appealing for the payment of the money owed them by the Crown.[1593] In 1924 Wiremu Henare Toka wrote to the Native Minister, Gordon Coates, on the subject of the revenues owing on Ruakaka, Mangawhai and several other blocks,[1594] prompting the Native Under Secretary to comment that:

> In various purchase deeds the Crown promised the Natives to expend 10% of the amount realised on resale of the land for certain Native purposes. Apparently it was either considered unnecessary to keep proper records or the matter of keeping accounts was overlooked and the Lands Department is finding difficulty in tracing what (if any) are the present liabilities.[1595]

[1590] Waitangi Tribunal, *Kaipara Report*, tpp.127-128.

[1591] Heaphy, minute, 6 July 1880, MA 13/32, Arch-NZ, [docs, vol.6, p.2033].

[1592] Heaphy to Native Under Secretary (minute), 9 March 1875, MA 13/32, Arch-NZ, [docs, vol.6, p.2052].

[1593] Waitangi Tribunal, *Kaipara Report*, p.128.

[1594] W.H. Toka to J.G. Coates, 6 May 1924, MA 85/8a, Arch-NZ, [docs, vol.6, pp.2065-2068].

[1595] R.N. Jones to Native Minister, 25 June 1925, MA 85/8a, Arch-NZ, [docs, vol.6, p.2064].

Just over a year later, the Under Secretary of the Lands and Survey Department commented that it was 'desirable that the matter should be definitely cleared up'. He noted that:

> In lieu of dealing with small amounts as they accrue from time to time it is considered by this Department that it would be in the best interests of the Natives and the Crown to arrive at a definite sum to liquidate the whole of the liability and hand such sum over to the Native Trustee or other authority to be dealt with in a manner consistent with the aims and objects covered by the clauses in the various purchase deeds.[1596]

Earlier proposals along similar lines had been made in 1863, 1867, 1869, 1899, and 1900.[1597] Yet such a scheme would have required the Crown to admit ongoing liability for payment of the ten per cents. Instead, with a number of petitions already submitted on the subject (including two relating specifically to Ruakaka),[1598] the opportunity was taken to refer these to the Royal Commission on Confiscated Lands and Other Grievances (commonly referred to as the Sim Commission), which had been appointed in October 1926.[1599] Thus a liability which the Crown had never previously denied was now made contestable. It was a clever way of dodging the bullet provided by the various petitions, especially given that the two Ruakaka ones had asked for a statement of accounts in one case and for payment of the sums owing in the other.

When it came to the actual amounts payable on the tenths the Crown was on a losing horse. The Crown's own calculations arrived at a total figure of £89,827 as the likely total revenue from all of the Northland blocks (adjusted for free grants under the 40-acre scheme and other factors such as unsold or leased lands), of which one-tenth

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[1596] J.B. Thompson to Native Under Secretary, 30 July 1925, MA 85/8a, Arch-NZ, [docs, vol.6, p.2063].

[1597] Hayes, p.56.

[1598] Wiremu Henare Toka and 33 others, Petition No.402/1924, MA 85/4, Arch-NZ, [docs, vol.6, p.2070]; Maki Pirihi and 60 others, Petition No.404/1924, MA 85/4, Arch-NZ, [docs, vol.6, pp.2071-2072].

[1599] On the background to the Sim Commission see Vincent O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864-1981', (Report commissioned by CFRT), June 1995, pp.103-111.

would be £8982. But just £1677 had been distributed by Heaphy, leaving a balance owing to Māori of £7305.[1600] The total revenue on Ruakaka alone was estimated at £10,770, meaning that the payments made by Heaphy in 1874 were only just over one-fifth of the total amount they might have expected to receive by the time of the Sim Commission inquiries.[1601]

Vincent Meredith, the Crown counsel before the commission, therefore sought to argue that the provisions in the deeds were not intended as imposing specific obligations to the vendors and their descendants, but were simply part of an understanding that an amount equivalent to ten per cent should be spent advancing 'the general interests' of Māori in education and health care. He then produced figures which purported to show that the Crown had spent some £2,362,385 on these purposes since 1853.[1602] It sounded like a wonderfully impressive figure in total – even if in reality it equated to just 77 pence per capita annual expenditure on Māori at the *lowest* official reported population in 1896. Some might also have quibbled with the inclusion of the expenses of the Native Minister in the figures given assertions that these were conservative and only included expenditure of direct benefit to Māori.

Either way, it was a brilliant diversionary tactic, designed to deflect attention away from the Crown's manifest failure to pay the sums owing northern Māori. And it worked brilliantly too. If Meredith could just about have personally authored the Myers Commission's report on the Mokau block, the same could be said for the Sim Commission findings with respect to the Auckland tenths petitions. The Sim Commission reported that:

> Evidence produced, showed on a conservative basis, the estimated value of the "tenths" to be under £9,000. Of this sum apparently nearly £1,700 was distributed among the chiefs in accordance with the clause in the deeds of

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[1600] Vincent Meredith (Crown Solicitor) to Secretary, Royal Commission, 9 May 1927, MA 85/5, Arch-NZ, [docs, vol.6, p.2089].

[1601] Summary showing position with respect to the blocks containing ten per cent reservation in deeds of purchase, MA 85/5, Arch-NZ, [docs, vol.6, p.2090].

[1602] Details of expenditure by the Government for various native purposes, 4 May 1927, MA 85/5, Arch-NZ, [docs, vol.6, p.2097].

> conveyance. This left a sum of approximately £7,000 in hand for the Government to apply for Maori education and health services. In this connection evidence showed that a sum well over £2,000,000 had already been spent on these services for the benefit of Maoris. The Maoris have received special medical services from the State apart from the general services to which they have equal access with the European population. In education, the Maoris have special schools established in their settlements, and records show that nearly £500,000 has been expended on Maori education in the Auckland and North Auckland Districts between the years 1880 and 1925. It was contended by counsel for the Crown that this expenditure ought to be treated as a performance of the obligation created by the covenants. We think that this is the proper view to take of the matter, and that the petitioners are not entitled to any relief.[1603]

The Crown was thus somehow completely exonerated from further payment of the sums owed Māori, despite the clear precedent established by Heaphy's 1874 distribution of the funds and his efforts to obtain the consent of the interested parties to any allocations made for health and education purposes. If the fund was not intended to bestow specific benefits on the vendors (and their descendants) of the blocks which included the ten per cent provision in their deeds then frequent suggestions that the Crown should liquidate its liability by means of a lump sum payment made little sense. And regardless of how the Crown may have originally envisaged the scheme working, it seems doubtful that the Ruakaka block owners interpreted the provision in their deed as merely a generic one, enabling the government to allocate the funds as it chose without reference to them. Certainly their descendants did not see matters this way.[1604] How precisely the 1927 Royal Commission was able to arrive at a contrary view is something of a mystery.

But the Sim Commission failed to comment at all on perhaps the most extraordinary feature of the claim for payment of the ten per cents owing on the various Northland

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[1603] Report of the Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances, AJHR, 1928, G-7, p.33, [docs, vol.24, p.8169].

[1604] Hayes, pp.67-68.

blocks. This was the claim, presented in at least three separate petitions from the descendants of owners of several other Northland blocks purchased by the Crown prior to 1865 without similar provisions in the deeds, praying that they should now receive one-tenth of the lands transacted.[1605] More than 60 years after the original transactions had been completed, it would seem, at least some northern Māori continued to see the terms of these as open to further negotiation. It was a remarkable testament to the persistence of Māori values in the north.

[1605] W.H. Toka and 33 others, Petition No.407/1924, MA 85/4, Arch-NZ, [docs, vol.6, p.2075]; W.H. Toka and 32 others, Petition No.408/1924, MA 85/4, Arch-NZ, [docs, vol.6, p.2074]; Paihau Rawiri and others, Petition No.411/1924, MA 85/4, Arch-NZ, docs, vol.6, p.2077].

## 8. Conclusion

By 1865 many Northland Māori had been left in a perilous position without, in many cases, probably even being aware of the fact. Vast tracts of the most valuable lands in the region had been acquired by the Crown and minimal reserves set aside for ongoing Māori use and occupation. For the time being, the transactions were largely theoretical. When they became a reality on the ground over subsequent decades many northern Māori would feel the full force of the Crown's failure to exercise any protective obligations towards them in the period prior to 1865. And compounding this, the operations of the Native Land Court became a heavy burden to bear for many Northland Māori. It is little wonder, perhaps, that the northern tribes became amongst the most enthusiastic supporters of the Kotahitanga movement in the 1890s or earlier local initiatives aimed at obtaining redress for their grievances under the terms of Te Tiriti o Waitangi.[1606]

Things might have turned out better if the Crown had at least delivered on its promised 'real payment' and ensured northern Māori retained an adequate landbase from which to take advantage of the new markets and other benefits expected to accrue from transacting their lands with the Crown. Yet ultimately the Bay of Islands Settlement Act had been, in its implementation or rather the lack thereof, the ultimate betrayal of Northland Māori. A strong sense of frustration is apparent from some later sources. In 1866, for example, one northern settler wrote that '[t]he natives think the pakehas a strange people, who survey a township and country lands, and are promised settlers for many years...and all yet remains in a state of nature, as far as the Government is concerned'.[1607] Just a few years later it was reported that 'the Ngapuhi tribes had held several meeting lately to consider whether or not they should seize the Customs revenue and take the Government of that part of the country into their own hands'. Their intention in contemplating such an action was not 'for the sake of obtaining the plunder, but with a view of carrying out necessary public works in their

[1606] O'Malley, *Agents of Autonomy*, p.134.

[1607] *Daily Southern Cross*, 14 April 1866, [docs, vol.24, p.8211].

district'.[1608] Those were the same public works, presumably, which Northland Māori had been promised would follow from transacting their lands with the Crown. If the government would not honour its word, northern Māori seemingly considered, they might just as well break into the customs house and get the job done themselves.

Without the 'real payment', Northland Māori had 'sold' their lands for what even Crown officials openly admitted was a 'trifling' consideration, even if those sales did not become a reality on the ground until much later, when the Crown was eventually strong enough to impose its interpretation on the transactions completed in the north between 1840 and 1865. Those transactions were, when considered as outright sales, frequently so poorly conceived, implemented and documented as to lack all validity. Even officials were frequently confused as to exactly what lands had supposedly been acquired by virtue of the pre-1865 deals. In 1866, for example, Chief Judge Fenton of the Native Land Court pointed to the 'immense confusion in which the lands in the North are involved, by reason of Old Land Claims which are undefined and unsettled, and Government Purchases which are many incomplete and most unknown or undefined'.[1609] Even considered simply as legal conveyances of land from Māori to the Crown, in other words, the Northland transactions were more often than not fatally flawed.

Northern Māori had agreed to enter into such arrangements in order to revive their stagnant economy and with a view to strengthening an ongoing relationship with the Crown and Pākehā of mutual benefit to both parties, only to find themselves later excluded from the lands in question. Such an outcome was not one they could possibly have conceived prior to 1865, when the northern tribes remained firmly in control of their own world.

It had taken an act of great faith to agree to transact nearly 800,000 acres of land with the Crown in the period between 1840 and 1865. That faith was surely sorely tested over subsequent decades as the consequences of these transactions at last began to be

[1608] G. Maurice O'Rorke, letter to the editor, *New Zealand Herald*, 19 October 1869, H.F. Carleton Papers, MS-Papers-0903, ATL, [docs, vol.10, p.3378].

[1609] Fenton to F. Whitaker (Agent for the General Government, Auckland), 10 May 1866, AGG-A 1 179/66, Arch-NZ, [docs, vol.24, pp.8224-8225].

felt on the ground. They had sold their birthright for a mess of pottage, seduced by Crown promises that proved little more than hollow in the end.

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Series 85:
MA 85/1-2 (Royal Commission on Confiscated Lands and Other Native Grievances: Minutes of Evidence)
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MA 1/121, 5/13/75 pt.1 (Petition No.107/1944 – Tamati Mahia and 140 others – Mokau Manginangina Takapau Block, 1935-1948)

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AUC 5 Te Hikuwai
AUC 6 Takou
AUC 7 Te Kiripaka
AUC 8 Pewhairangi [Te Keri Keri]
AUC 11 Ngahikunga Reserve
AUC 12 Te Wiroa and Parangiora
AUC 13 Mokau
AUC 14 Te Kawa Kawa

AUC 15 Matawherohia

AUC 16 Upper Kohumaru

AUC 20 Te Kauri

AUC 21 Te Wharau

AUC 22 Patunui

AUC 23 Hikuwai (Keri Keri)

AUC 26 Te Taraire (No. 2)

AUC 27 Te Pupuke (upper side)

AUC 28 Kororareka Lot 8 Section 5

AUC 29 Russell Allotments

AUC 31 Maungataniwha East

AUC 33 Maungataniwha West No.1

AUC 34 Maungataniwha West No.2

AUC 35 Te Ruapekapeka

AUC 36 Ngahere Kahikatea

AUC 38 Okokako

AUC 40 Purerua [Hansen's Homestead]

AUC 41 Oruru

AUC 42 Te Wiroa and Omawake

AUC 43 Te Whakapaku

AUC 44 Taraire No. 1

AUC 55 York Street, Russell

AUC 56 Two Sections at Kororareka

AUC 56A Pororua's interests in land sold by Nopera

AUC 60 Rangitoto Island

AUC 62 Pukekauere

AUC 65 Mahurangi [Ngati Paoa claims]

AUC 85 Mahurangi

AUC 98 Komakokiri No. 2

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AUC 295 Waikare

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AUC 298 Hokopua

AUC 299 Whangarei (islands in the river)

AUC 300 Mimiwhangata

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AUC 302 Tamaterau

AUC 303 Parahaki

AUC 305 Kaiwa

AUC 306 Te Mata

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AUC 310 Mangawhai and Waipu

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AUC 317 Maungakaremea No. 2

AUC 318 Waipu No. 1

AUC 319 Te Tupua

AUC 320 Maungatapere

AUC 402 Ahuroa and Kourawhero

AUC 403 Rauiri [Poupouwhenua]

AUC 404 Waikaraka road and landing place

AUC 405 Road to Otaika

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AUC 646 Otaiheke

AUC 650 Waiariki (right of road)

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2691-2694: ABWN 6095 accw5021 7/829 part 1 (box 254)

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2952-2953: McLean f.7 Official

2954-2966: McLean f.8 Official
2967-2970: McLean f.11 Official
2971-2985: McLean f.13 Official
2986-2999: McLean f.39 Official

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3009-3026: McLean f.184 Thomas Gore Browne.
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**Micro-MS-666**

3332-3352: James Burnett Letterbook, 1856-1869, 1944

**MS-Copy-Micro-0755-15**

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**MS-Papers-0903**

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**Micro-MS-Coll-4-44**

3381-3382: Church Missionary Society CN/06, Joint Reports and Correspondence

**Micro-MS-Coll-4-49**

3383-3391: Church Missionary Society CN/027, Robert Burrows Letters 1839-77

**MS-Papers-1737-1**

3392: William Ormiston, Extracts from Diary, 1859, 1861

**MS-1947**

3393-3409: (Dr.) Andrew Sinclair, Letters and Journals 1844-1856.

**MS-Copy-Micro-0765-01**

3410-3441: John White, Papers. Correspondence – Māori land claims (f.1).

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**Letterbook of Governor FitzRoy and Governor Grey, 1845-1853**

3442-3467: NZMS 227 FitzRoy & Grey. Vol.1.
3468-3471: NZMS 227 FitzRoy & Grey. Vol.2.
3472-3478: NZMS 227 FitzRoy & Grey. Vol.3.

**Sir George Grey, New Zealand Manuscripts**

3479-3502: Octavius Hadfield, System of Government among the New Zealand Tribes, 1846, GNZMSS 17 Vol. 8 pp-73-96.
3503-3508: Account of Meeting held at Ahipara in 1863, GNZMSS 80 Vol. 35 pp.149-154.
3509-3524: Sir Godfrey Thomas, A Trip to the Bay of Islands in December 1846 and January 1847, GNZMSS 134 Vol. 53 pp. 62-77.
3525-3527: Memorandum re Mr Kemp's Pension, GNZMSS 201 Vol. 63 pp. 74-76.
3528-3561: Correspondence between Governor FitzRoy and Thomas Beckham, Police Magistrate, Russell, 1845, GNZMSS 240 Vol. 75 pp 1-34.

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**MS 375**

3562-3627: Letterbook of the Civil Commissioner Waimate 1861-1865.

**MS 46**

3628-3682: James Busby Papers, 'Occupation of New Zealand 1833-1843', Box 6, Vol.1.

**MS 92/65**

3683-3689: Henry James Shepherd, Reminiscences.

**MS 1387**

3690-3714: John T. Stewart, 'A Trip in Northern New Zealand,' July-August 1857.

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**Statistics of New Zealand**

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4819-4834: *Statistics of New Zealand for 1857, Compiled from Official Records*, Auckland: New Zealand Government, 1858
4835-4852: *Statistics of New Zealand for 1858, Compiled from Official Records*, Auckland: New Zealand Government, 1858

**Miscellaneous Printed Publications**

4853-4859: Letters from Ngapuhi to Governor Grey, 1863
4860: *He Pukapuka na te Kawana, ki a Ngapuhi, ki a Te Rarawa, Hui Katoa*,18 August 1863
4861-4862: *The Decision of the Governor in the Dispute between Matiu and Te Tirarau*, 7 February 1863

4863-4865: *Address of His Excellency the Governor to the Ngapuhi on the Occasion of Uncovering the Monument to Tamati Waka Nene*
4866: Letter from Arama Karaka Haututu and others to Queen Victoria, 29 May 1875
4867-4876: Daldy, William: *New Zealand. Bay of Islands Special Settlement in the Province of Auckland*, London: Rees and Collin, 1865

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