

Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874

A Report Commissioned by the Waitangi Tribunal for the North-Eastern
Bay of Plenty Inquiry District
(Wai 1750 #A3)

Report Summary for Hearing

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1. Introduction

- 1.1. The Waitangi Tribunal commissioned the report summarised here in October 2019.¹ As a focussed overview research report it provides a high level assessment of the raupatu (land confiscation) implemented in the North-eastern Bay of Plenty Inquiry District over the period of 1865 to 1874. The requested period was initially established as 1865 to 1871, but has been extended to 1874 to allow the inclusion of relevant compensation awards published in that year.
- 1.2. Over five chapters, and largely in chronological order, the report contextualises then describes the 1862 murders of Völkner and Fulloon and the subsequent response of the colonial authority and its military forces, and its implementation of raupatu (land confiscation) and the related compensation in the district.
- 1.3. The Waitangi Tribunal commissioned the report before the completion of Dr Therese Crocker's pre-casebook research discussion paper, and the report was submitted onto the record of inquiry in July 2020. Since then, the Waitangi Tribunal has commissioned other evidential reports which offer more comprehensive analysis on the tribal landscape, early cultural interactions, raupatu, war and invasion, and nineteenth century political engagement.²
- 1.4. The scope of the report was concise by design, but was further limited by a lack of engagement with te reo Māori primary sources, and restrictions on archives and repositories due to the COVID-19 pandemic.
- 1.5. The report was completed before the Presiding Officer confirmed the final boundaries of the North-Eastern Bay of Plenty inquiry district. That decision moved the western boundary of the district to take in the whole of the Ōhiwa Harbour. As a result there may be discrepancies between this report and those that followed when referencing lands and compensation awards within the inquiry district.

2. Historical context

- 2.1. Chapter two provides some historical context for the chain of events which began in 1865, which are the primary focus of this report. It builds a high level understanding of Māori on the ground in the Inquiry District up to 1865, some of the intra-tribal dynamics of Whakatōhea and Ūpokorehe, their relationships with colonial authorities and other iwi, their economy, and their spirituality.
- 2.2. Whakatōhea occupied most of the land within the initial North-Eastern Bay of Plenty Inquiry District confiscated under the New Zealand Settlements Act 1863, and its

¹ Wai 1750 #2.3.1, 1 September 2019.

² These include: #A30 Tony Walzl, 'War and Raupatu 1840–1871', Waitangi Tribunal, 15 Mar 23; #A31 Dr David Williams, 'Tribal connections, settlement patterns and resource use in the North-Eastern Bay of Plenty prior to 1860', 15 Sep 23; #A11 Dr Therese Crocker, 'An Overview of Political Engagement in the North-Eastern Bay of Plenty, 1871 – 2017', 6 Aug 21; #A12 Jane Luiten, 'Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part One: Raupatu lands', 13 Aug 21; #A25 Jane Luiten, 'Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part Two: Lands 'a waho'', Aug 22.

amendments, in early 1866. At this time the Whakatōhea iwi, through six hapū, including Ngāi Tama, Ngāti Ira, Ngāti Patu, Ngāti Rua, Ngāti Ngahere and Ūpokorehe maintained a coastal boundary from Ōhiwa in the west to Ōpape in the north-east. Tribal boundaries and the resources within them were often fluid and contested with neighbouring iwi.

- 2.3. It is necessary to note the particular relationship of Ūpokorehe to Whakatōhea. This group also has close ties to Tūhoe, and the Government has, at various times, viewed it as a hapū of either Whakatōhea or Tūhoe, or both. However, some members of Ūpokorehe maintain their independence as an iwi in their own right. Due to the nature of sources used in this report, references to Whakatōhea may include Ūpokorehe unless otherwise specified.
- 2.4. The context chapter is largely informed by a number of established histories on the north-eastern Bay of Plenty and Whakatōhea, including works from Ranginui Walker, A C Lyall, as well as numerous Waitangi Tribunal reports from the surrounding inquiry districts, and commissioned research reports. The reports of Tony Walzl and Dr David Williams now provide substantially more historical context than was able to be captured in this report.³
- 2.5. It is clear that the hapū of Whakatōhea had held close connections to the Ōpōtiki Harbour and this part of the coast for generations. Despite withdrawing inland in the wake of the Musket Wars of the 1820s, they had slowly returned by the signing of the Treaty of Waitangi in 1840.
- 2.6. Adapting to the increasing economic opportunities that trade with Pākehā markets offered during the mid-nineteenth century, Whakatōhea congregated around the Ōpōtiki Harbour in several settlements including the largest, Pākōwhai. The harbour enabled communication and access to markets by ship, while the surrounding fertile valleys offered prime lands for crops and livestock. The returns were sufficient to enable Whakatōhea to establish their own flour mill and shipping to get goods to Auckland and elsewhere. Supplying the Pākehā markets resulted in an increased material wealth, including European-style household items and farming equipment, and horses.
- 2.7. By the 1860s, Whakatōhea could be described as a prosperous iwi, with the fertile lands of the north-eastern Bay of Plenty the basis of that prosperity. Although the tumultuous state of the North Island in the early to mid-1860s reduced the earning potential of Whakatōhea, they retained much of their material wealth up to the occupation of Ōpōtiki by colonial forces in 1865.
- 2.8. Until the 1860s, the north-eastern Bay of Plenty had remained largely isolated from Pākehā and colonial authority. The main exception to this was Pākehā missionaries. From 1834, some Māori taken prisoner from the north-eastern Bay of Plenty and converted to Christianity during the Musket Wars began to return with the faith. In the

³ #A30 Walzl, 'War and Raupatu 1840–1871'; #A31 Williams, 'Tribal connections, settlement patterns and resource use in the North-Eastern Bay of Plenty prior to 1860'.

1840s, European missionaries established Anglican and Catholic missions in the area. The Anglican (Church Missionary Society) Reverend Carl Sylvius Völkner and the Roman Catholic Father Garavel had both gained substantial Māori adherents in the region by the 1860s.

- 2.9. The north-eastern Bay of Plenty was not immune to the political and socio-economic impacts of the Taranaki and Waikato Wars in the first half of the 1860s. Although little fighting occurred in the immediate region and few Māori from the area were physically involved in the wider fighting, Whakatōhea was drawn into the conflict in a variety of ways.
- 2.10. For Whakatōhea the most significant involvement followed some members proclaiming their alliance with the Kīngitanga in early 1864. An unknown number of Whakatōhea joined a Tai Rāwhiti taua as it attempted to reinforce Kīngitanga forces against the Crown. However, Te Arawa blocked the taua from crossing its lands. With support from Crown and Tūwharetoa forces, Te Arawa eventually defeated the taua at the Battle of Kaokaoroa.
- 2.11. Rangatira from different Whakatōhea hapū are thought to have formed part of the taua, including Te Āporotanga and Hira Te Popo (Ngāti Ira), Kakarua (Ngāi Tama), Mokokoko (Ngāti Patu), and Te Iki (Ngāti Rua). The taua suffered heavy losses, including the death of Te Āporotanga who was considered an ariki (paramount chief) among Whakatōhea.
- 2.12. These events likely cemented animosity between Te Arawa, considered 'loyal' by the Crown, and Whakatōhea, as well as the Government's perception of Whakatōhea as 'rebels'. The events also fed a distrust of Völkner among some Māori in the Bay of Plenty. There were suspicions (later proven to be true) that he was supplying the Government with intelligence regarding Māori movements and allegiances within the Bay of Plenty during the conflict.

3. Unrest and military response

- 3.1. Chapter three is in two parts. Part one discusses the introduction of Pai Mārire to Ōpōtiki and how the rising influence of the religious movement, coupled with the growing distrust Whakatōhea had for Reverend Völkner, led to his execution within their rohe. It also describes the subsequent killing of James Fulloon and the crew of the *Kate* in Whakatāne.
- 3.2. Part two details the government's military landing and Ōpōtiki campaigns in pursuit of Pai Mārire adherents and the killers of Völkner and Fulloon and his crew. It also covers the subsequent trials and convictions of those suspected of the murders. The focus is on those activities and the people involved in them from within the North-Eastern Bay of Plenty Inquiry District.
- 3.3. Chapter three is primarily sourced from previous Waitangi Tribunal reports and research reports commissioned for Waitangi Tribunal inquiries. It also draws on

secondary texts and official government publications, including the *Appendices to the Journals of the House of Representatives*, the *New Zealand Gazette*, the communications of military officials and other Crown agents, and the Native Land Court minute books. Greater depth is provided on the unrest and military response in Walzl's report, and a recent book by Ron Crosby.⁴

- 3.4. In early 1865, as part of a wider attempt to unify Māori, Pai Mārire emissaries arrived in the north-eastern Bay of Plenty. The emissaries included Kereopa Te Rau (Ngāti Rangiwewehi, Te Arawa) and Patara Te Raukauri (Taranaki) alongside a group of about 40 Māori adherents and 150 Ngāti Awa led by Wepiha Te Poono. Before arriving in Ōpōtiki on 25 February 1865, Mokomoko (Ngāti Patu) and approximately ten other Whakatōhea also joined the group.
- 3.5. Historians suggest that Whakatōhea may have been more open to the ideas of Pai Mārire at this time of disaffection and diminished leadership following the defeat at Kaokaoroa, the associated loss of Te Āporotanga and other leaders, lacklustre cultivations, and recent outbreaks of disease.
- 3.6. Although there was a sizable Māori Christian population in Ōpōtiki by 1865, Völkner had lost popularity in large part due to suspicion of his loyalty. Völkner was absent when the Pai Mārire emissaries arrived. In his absence, Kereopa gained the interest of the local population, extolling Pai Mārire teachings and denouncing the Anglican Church. This hardened the locals' views against Völkner.
- 3.7. The specifics of the events that follow and who was involved remain largely contested.
- 3.8. When Völkner returned to Ōpōtiki on 1 March 1865, he was detained, alongside Reverend Grace and the sailors of their ship. It is known that members of Whakatōhea, the visiting Pai Mārire and Ngāti Awa groups discussed the detainees' fate at length. The result was the execution of Völkner and the ceremonial debasement of his body on 2 March 1865, and the continued imprisonment of Grace, though he later escaped.
- 3.9. It is generally agreed that Völkner's execution was Kereopa's initiative. However, there are varied and conflicting accounts of the wider events, who else was involved, what roles they played, and what level of endorsement they provided.
- 3.10. For Whakatōhea, it is clear that some individuals from the iwi supported and were involved in the actions that day. However, the majority of Whakatōhea did not support the actions and were not involved.
- 3.11. The Government's initial response to Völkner's murder was to send an expedition to the north-eastern Bay of Plenty in May 1865, which included Fulloon (Ngāti Awa, Tūhoe) with support from Tiwai (Whakatōhea). The Government expected the

⁴ #A30 Walzl, 'War and Raupatu 1840–1871'; Ron Crosby, *Te Kooti's Last Foray* (Auckland: Oratia Books, 2023).

expedition to gather information on the whereabouts of Kereopa and assist the planning of a Crown military campaign against Pai Mārire in the Bay of Plenty.

- 3.12. A second expedition, with a militia led by Fulloon, arrived off the coast of Whakatāne on 22 July 1865. The arrival of the ship breached an aukati established to protect the Ngāti Awa people. In response, a party of local Ngāti Awa, Te Whānau-ā-Apanui and Pai Mārire adherents boarded the ship. Fulloon managed to offend the boarding party to the extent that they later reboarded the ship and killed Fulloon and three members of the crew.
- 3.13. The unchecked defiance of Pai Mārire towards Crown authority, which now included the killing of Crown servants and missionaries, outraged Pākehā settlers. It also led the colonial Government to worry that it risked losing the ongoing support of the remaining groups of 'loyal' Māori.
- 3.14. On Saturday 2 September 1865, Governor George Grey acted forcefully by issuing a Proclamation of Peace. On one hand the Proclamation claimed to end the wars in the Waikato and Taranaki; provide amnesty to all those who had acted against the Crown, including some Māori and hapū of the north eastern Bay of Plenty; and promised no further lands would be taken as punishment for prior actions.
- 3.15. On the other hand, the Proclamation's amnesty specifically excluded, among others, all those 'concerned in' the murders of Reverend Völkner and James Fulloon. It also declared an expedition to arrest all those suspected of involvement in the killings, and the confiscation of tribal lands of anyone caught assisting the suspects. It stated that confiscated lands would be used or sold to help fund or maintain the security of the Bay of Plenty and to provide for the families of those murdered.
- 3.16. On Sunday 4 September 1865, the Government issued a Martial Law Proclamation for Ōpōtiki and Whakatāne. It provided the Commander of the Military Forces with summary authority, and enabled the suspected killers and those suspected of aiding them to be tried by courts-martial. Governor Grey also provided the Commanding Officer in Ōpōtiki the authority to carry out executions without the need for further consultation if guilty murder verdicts were made. Both Proclamations were gazetted on Tuesday 5 September 1865.
- 3.17. The resulting expedition was a two-pronged military response. The first targeted Ngāti Awa, with the support of Te Arawa and Ngāti Tūwharetoa forces, and occurred inland from Matatā and as far as Te Teko (outside of the Inquiry District). The second prong targeted Whakatōhea in Ōpōtiki and extended into the Waimana Valley and to the people of Tūhoe, using the Whanganui Native Contingent.
- 3.18. On 8 September 1865, a colonial force arrived by flotilla in the Ōpōtiki Harbour. The colonial forces comprised some 516 men, many of whom were from the west coast, and included military settlers, militia, rangers, yeomanry cavalry, and the Whanganui Native Contingent. The colonial forces faced an estimated 200 local and Pai Mārire-affiliated Māori.

- 3.19. Despite problems crossing the sandbar, troops began landing and were able to form a beachhead. The landing of troops was complete by 11 September and they were able to take over and reinforce Pākōwhai village, converting it into a redoubt. During this initial period of the occupation there is evidence the colonial forces engaged in the indiscriminate shooting and bombardment of Māori and Pākōwhai village.
- 3.20. The colonial forces landed and engaged with force without explaining the purpose of their presence, and without providing an opportunity for the surrender of those suspected of Völkner's murder. The research for this report found no evidence that colonial forces communicated the reason for their presence in Ōpōtiki to Whakatōhea or Pai Mārire prior to 17 September 1865, nine days after landing. Such an approach is unlikely to have allowed a differentiation of treatment for those innocent of any involvement in the deaths of Völkner and Fulloon.
- 3.21. The local Māori and Pai Mārire adherents attempted some largely ineffective resistance before they fled their pā and villages for the bush. This resistance was either offered by Ngāti Rua or Ngāti Ira before they withdrew to pā at the entrance of the Waioeka Gorge. Other Whakatōhea hapū from surrounding settlements are believed to have moved inland during the bombardment of Pākōwhai.
- 3.22. Colonial forces pursued the Pai Mārire adherents and Whakatōhea into the bush on the premise of capturing Kereopa and other suspects. In this pursuit, several abandoned pā were taken and the surrounding crops and livestock were confiscated or destroyed using scorched-earth practices. Colonial forces were provided inadequate rations, with an expectation they would obtain supplies and horses through looting or confiscation from the local population. Confiscated horses were given government brands, and the proceeds of the sale of some cattle and farming equipment are known to have gone to the government.
- 3.23. The defining battles of the campaign began on 4 October 1865, where the plains of the Waioeka and Ōtara Rivers meet the Urewera. Under the command of Hira Te Popo, Ngāti Ira occupied three pā in this area, alongside Ngāi Tama (Tūhoe) and others described as 'Hauhau'. Colonial forces first attacked Te Tarata Pā, during which they routed a reinforcement attempt from those in Te Puia Pā. Those in Te Tarata Pā refused an unconditional surrender. Instead, they attempted an escape during which the colonial forces inflicted substantial losses. An attack on Te Puia Pā a few days later saw the occupants escape and withdraw further into Waioeka Gorge, to Kohipaua Pā.
- 3.24. After defeat at Te Tarata and Te Puia, there was a growing realisation that resistance was futile. Large groups of Māori in the area including Whakatōhea and Pai Mārire adherents began to surrender. By November 1866, the majority of the fighting was over and most had surrendered and taken the oath of allegiance. However, some resistance continued well into 1867 with Kereopa and other Pai Mārire adherents (like Ngāi Tama (a hapū of Tūhoe) under Tamaikowha), and Whakatōhea (including sections of Ngāti Ira under Hira Te Popo) undertaking smaller guerilla-type operations.

- 3.25. A motivating factor in surrendering would have been the scorched-earth type practices which left few resources for the local population to sustain themselves in hiding. Those considered innocent were sent on to Ōpape or Tōrere where the Government was arranging reserves. Some were also involved in assisting the colonial forces in their pursuit of Kereopa, by providing supplies or acting as guides.
- 3.26. By January 1867, 58 Whakatōhea were known to have been killed, with an unknown number wounded. This was a significant number for an iwi of approximately 500 members.
- 3.27. Treatment of those who surrendered or were captured varied depending on the timing and the perceived guilt of the individuals. Government forces only detained those considered suspects in Völkner or Fulloon's murders or considered accessories before the fact. Four men were detained to stand trial at court-martial for Völkner's murder in Ōpōtiki. These included Mokomoko (Ngāti Patu, Whakatōhea, and Ūpokorehe), Heremita Kahūpaea (Ūpokorehe), Hakaraia Te Rāhui (Ngāti Ira, Whakatōhea) and Paora Taia (Whakatōhea). Kereopa was not captured until 1871. He was convicted of Völkner's murder and hanged in January 1872.
- 3.28. The courts-martial were run by military officers in Ōpōtiki between 6 and 27 November 1865. The courts-martial of those tried for the murder of Fulloon and crew, or as accessories before the fact also ran at this time. However, by the time of the trials, Governor Grey had retracted the right of the Commanding Officer to impose an execution without his authorisation. Before Grey could authorise the executions, the Attorney General James Prendergast declared that martial law was not sufficient to legitimise the court-martial of civilians. The trials were essentially annulled, requiring the men to stand trial again before a civil court.
- 3.29. In March 1866, a prima facie case was established against the prisoners. Now joined by Penetito of Ngāti Awa, the men stood trial together for Völkner's murder in Auckland's Supreme Court. Despite often incomplete and contradictory evidence, all but Paora received a guilty verdict. In sentencing, Paora was discharged, while the others received death sentences. On 17 May 1866, Mokomoko, Heremita Kahūpaea, and Hakaraia Te Rāhui were hanged at Mount Eden Gaol. Penetito's sentence was commuted and he was released in October 1866.
- 3.30. The supposed pursuit of justice for the killing of Völkner took over a year and claimed the lives of many innocent Māori, including that of Mokomoko, who maintained his innocence right to the end. He was not pardoned until 1992 and 2013, well over a century later.

4. Raupatu: confiscation of lands

- 4.1. Chapter four examines the authority under which the colonial government proclaimed and implemented raupatu within the North-Eastern Bay of Plenty District. The chapter discusses the origins, development and implementation of the confiscation legislation and its amendments, and the nature of the land that the Government confiscated

compared to the land that it set aside for Māori.

- 4.2. Key sources for chapter four included the official publications of the New Zealand Government at the time, and the official communications between Governor Grey and Special Commissioner to the Bay of Plenty J A Wilson. Waitangi Tribunal reports and commissioned research reports provided guidance, as did Richard Boast and Richard Hill's edited collection on raupatu⁵. Further detail on the confiscation of lands is now also available in the reports of Walzl, and Jane Luiten.⁶
- 4.3. Generally speaking the colonial government was motivated to confiscate Māori land for a multitude of reasons in the 1860s. These included a desire to incapacitate future Māori rebellion, and to obtain more land to sell for Pākehā settlement, the proceeds of which could be used to repay the colony's war debts.
- 4.4. The government had existing legislation which they had already used in areas of Taranaki and Waikato, namely, the New Zealand Settlements Act 1863 and its later amendments. This legislation enabled the Governor to confiscate the lands of iwi which the Governor perceived to have acted in 'rebellion' against the authority of the Crown.
- 4.5. In practice, colonial authorities considered a 'rebel' to be anyone who they considered had fought against the Crown, encouraged or facilitated opposition to the Crown, or who had attacked others or the property of others, since 1 January 1863.
- 4.6. The 1865 Peace Proclamation protected from prosecution, including further land confiscation, all those who had previously taken up arms against the authority of the Crown. This amnesty excluded those associated with specified murders, including those of Völkner and Fulloon and his companions. It also excluded those considered to have undertaken such action after the Peace Proclamation.
- 4.7. Māori within the Inquiry District were likely unaware of the Proclamation and its terms when they first chose to resist or flee the arrival of the colonial forces. Despite this, between September (when the Proclamation of Peace was published) and January 1866 (when the Bay of Plenty confiscation district was declared), there were no significant offensive attacks on colonial forces in the region of Ōpōtiki. Instead, Whakatōhea and other iwi (including Pai Mārire adherents) withdrew from the attacks of colonial forces and were pursued inland. When given an appropriate opportunity, they largely surrendered and took the oath of allegiance. Only relatively small groups of dedicated Pai Mārire adherents held out for more than a few months.
- 4.8. Subsequently, on 17 January 1866 the Bay of Plenty District was proclaimed. Under the New Zealand Settlements Act 1863, the District was formed and its entirety, an

⁵ Richard Boast & Richard S Hill (eds), *The Confiscation of Maori Land: Raupatu* (Wellington: VUP, 2009).

⁶ #A30 Walzl, 'War and Raupatu 1840–1871'; #A12 Luiten, 'Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part One: Raupatu lands'; #A25 Luiten, 'Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part Two: Lands 'a waho'.

estimated 440,000 acres of Māori land, was confiscated immediately for settlement as a response to actions considered to be 'rebellion'.

- 4.9. Under the Act, the existence of 'rebellion' did not need to be judicially proven as it declared that insurrection and rebellion existed in law, whether or not it existed in fact. Governor Grey simply needed to be 'satisfied' that 'rebellion' had occurred for the confiscation to be enforced. Regardless, the Government passed the New Zealand Settlements Amendment Act 1866 that October, which had the effect of affirming that the confiscation was 'absolutely valid' and incontestable in court. The confiscation of such a large amount of land suggests the Governor held Whakatōhea (Ngāti Awa and Tūhoe, among others) accountable for not surrendering Völkner's (and Fulloon and his crew's) suspected murderers.
- 4.10. How the boundaries of the District and the confiscated lands within it were decided was never made explicit. Although there may have been an intention to target the lands of those considered responsible for the murders of Völkner (Whakatōhea) and Fulloon and his crew (Ngāti Awa) the linear lines of the confiscation boundary lack the nuance and dynamism of customary tribal boundaries. In drafting the confiscation boundaries for Whakatōhea, officials do not appear to have made any attempt to distinguish between the different landholdings of hapū, or their varied involvement in the killing of Völkner and assistance provided to those suspected of the murder to evade arrest.
- 4.11. Legally, the stated purpose of the confiscation under the Act was to provide sufficient lands for military settlers to both protect themselves and the peace within the District. However, the area of land confiscated far exceeded the minimum necessary to achieve such a purpose.
- 4.12. An indicative assessment at the time estimated 440,000⁷ acres were included in the confiscation. Whakatōhea had 143,870 acres confiscated (about 29 per cent of their lands) and were left with 347,130 acres (it is not explicit that Ūpokorehe were included within this). Ngāti Awa had 56,799 acres confiscated, maintaining 50,321 acres; and Tūhoe had 14,731 acres confiscated, maintaining 1,234,549 acres.
- 4.13. The land confiscated, although not of a uniform quality, included flat land suitable for European-style settlement, cropping, and farming, and some of the area's most promising routes for inland and regional communication. This land was largely awarded to military settlers or sold. Although some land was later returned, Whakatōhea retained ownership or access to very little of the flat alluvial plains around Ōpōtiki which had enabled their economic prosperity between the 1840s and 1865. Further, the land that the Crown returned to Whakatōhea and Ūpokorehe was often unsuitable for producing food for sustenance or trade, and did not include access to urupā and other cultural sites of significance.

⁷ Estimates of total confiscated land have varied. For example: 440,000 acres; 448,000 acres; 480,000 acres.

5. Compensation for lands confiscated

- 5.1. Chapter five examines the authority under which the Crown implemented confiscation in the North-Eastern Bay of Plenty Inquiry District. It then describes the compensation process which began in 1866 through privately negotiated out-of-court settlements, the four sittings of the Compensation Court in 1867, and the subsequent compensation awards of reserves and individualised land titles.
- 5.2. Chapter five relies largely on the surviving communications and reports of Special Commissioner J A Wilson, the minute books of each Compensation Court, the official publications of the New Zealand Government, and Waitangi Tribunal research reports. Again, the reports of Walzl and Luiten now provide a greater depth of analysis than was possible within the scope of this report.⁸
- 5.3. The Government recognised that the complete alienation of Māori from the land could foment further ‘rebellion’. Subsequently, the Government made some effort to compensate ‘friendly’ Māori and those ‘rebel’ Māori who relinquished their arms and submitted to a trial and the authority of the Crown when requested. Compensation was mostly in the form of reserves of land within the proclaimed district and held in trust (rather than customary tenure), but could also be monetary.
- 5.4. The principal legislation behind the compensation process was the New Zealand Settlements Act 1863 and its amendments. It provided the authority for the Special Commissioner to make private compensation arrangements out-of-court. It also authorised the Compensation Court to investigate submitted claims and to award compensation.
- 5.5. All of the prior and future decisions of the Special Commissioner and all future decisions of the Compensation Courts were made ‘absolutely valid’ with the passing of the New Zealand Settlements Act Amendment Act 1866 in October of that year.
- 5.6. The Confiscated Lands Act 1867 extended the New Zealand Settlements Act 1863 and its amendments. Significantly, it allowed reserves of land to be awarded to Māori from the confiscated lands with specific conditions attached.
- 5.7. The proclaimed confiscation boundaries for the Bay of Plenty required amending after they were defined by inaccurate geological features. Then later, after questioning of its jurisdiction by Compensation Court Judges, a third proclamation was necessary to specifically define the area confiscated for military settlement.
- 5.8. The compensation process was largely controlled by J A Wilson who was appointed Special Commissioner in September 1865, and later acted as the Crown Agent in the Compensation Court process. Wilson arrived in the district in early 1866 following the proclamation of the confiscation district. As Special Commissioner, Wilson’s first

⁸ #A30 Walzl, ‘War and Raupatu 1840–1871’; #A12 Luiten, ‘Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part One: Raupatu lands’; #A25 Luiten, ‘Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty, Part Two: Lands ‘a waho’.

priority was arranging a survey of the lands and setting aside sufficient lands for military settlement. The lands eventually allocated to military settlers including the settlements at Ōpōtiki, Ōhiwa, and Whakatāne totaled 23,461 acres⁹ and predominated the flatter fertile valley lands.

- 5.9. From the lands remaining, Wilson negotiated out-of-court settlements with some eligible Māori claimants, and identified further lands that the Compensation Court could award to successful claimants.
- 5.10. Through 1866 most of Wilson's efforts were spent in areas outside of the Inquiry District. However, during 1867 Wilson paid greater attention to the area in and around Ōpōtiki, as he ran out-of-court negotiations around and during the Compensation Court sittings. By June 1867 Wilson had awarded eight Native Reserves for hapū and rangatira across the Bay of Plenty district.
- 5.11. Due to the limitations of the source material consulted for this report, there is little clarity regarding how the size, character or location of the award of reserves was determined for these out-of-court settlements. However, a high level overview of the reserves within the initial Inquiry District awarded by Wilson and through the Compensation Court is provided at the end of this section.
- 5.12. The Government established the Compensation Court to decide which outstanding claims were valid, and to award successful claimants' sections of land. The exact location of these sections was later negotiated between the Crown Agent and the claimant or claimant's agent. Wilson's roles as both Special Commissioner and Crown Agent would have enabled him to exert an undue influence over the Court process.
- 5.13. The Court sat four times between March and December 1867, in Ōpōtiki, Maketū, Whakatāne, and Te Awa o te Atua (Matatā). Despite initial difficulty finding an experienced Judge to preside over the Court, eventually the Ōpōtiki Compensation Court proceeded with Judge Mair presiding, later assisted by the inexperienced Judge Smith. Judge Mair also presided over the Whakatāne and Te Awa o te Atua sittings. Judge Mackay ran the short Maketū sitting.
- 5.14. The Court faced some difficulties in its proceedings, including many witnesses and claimants failing to appear leading to adjournments and the outright dismissal of some cases. Reasons for absence included the short notice provided ahead of Court sittings, ongoing hostilities in the region impairing safe travel, and the need to attend harvests.
- 5.15. During the Ōpōtiki session the Judge questioned the legality of the Crown's confiscation in the Bay of Plenty District. Confiscation was justified under the Act when the lands were needed and would be used for military settlement to keep the region safe. It was not clear this was the case in the Bay of Plenty. To ensure the

⁹ The land initially allocated for military settlement was likely higher, as some lands were later made available for Māori claimants through the Compensation Court.

Compensation Court did not act outside the law, Judge Smith decided that the Court would only award successful claimants an amount of land and would leave the Crown Agent to settle the location of land with the claimants or their agent.

- 5.16. In the Maketū Compensation Court, Judge Mackay settled the issue of future outstanding claims against land already allocated to military settlement. Judge Mackay declared that the Compensation Court could not return land to claimants that Wilson (as Special Commissioner) had already allocated to military settlement. Despite having their claims to the specific lands upheld, the successful claimants would be awarded land elsewhere. As with the Ōpōtiki hearing, the location was to be determined with Wilson as Crown Agent.
- 5.17. Another issue raised in the Court was that of the eligibility of the wives of 'rebels'. The eligibility of women to compensation whose husbands had been 'rebels' was discussed in the Te Awa o te Atua sitting of the Court. The Judge established, despite Wilson's objections, that women who were otherwise eligible for compensation would maintain their eligibility as long as they themselves had not actively partaken or supported the 'rebellion'.
- 5.18. Due to limited records, it is difficult to ascertain how the Judges' decisions were made, how witness testimony was balanced and weighted, and how much say claimants were able to exercise in negotiating their awarded land with Wilson. However, most claims that the Court dismissed were due to claimants admitting 'rebellion', failing to appear in court, or having submitted duplicate claims. Under the 1866 amendment to the New Zealand Settlements Act 1863, claimants left unsatisfied by the outcome were left without an avenue to contest the decision.
- 5.19. As Crown Agent, Wilson ensured Whakatōhea witnesses were able to provide evidence in Court to defend against claims on their customary lands around Ōpōtiki brought by Māori of hapū more commonly associated with lands further afield. The small number of these claims from outside hapū that were upheld were awarded monetary payments or land elsewhere. Wilson's efforts were likely an attempt to ensure the lands around Ōpōtiki could be prioritised for military settlement and the claimants of Whakatōhea.
- 5.20. Both the out-of-court negotiations and four Compensation Court sittings were carried out during the ongoing unrest in the Bay of Plenty. The unrest was blamed for hampering both claimants' and witnesses' access to the Court. It also affected the accurate and timely surveying of lands for settlement and award through compensation.
- 5.21. The efficacy of the Compensation Court process was also inhibited by the complexity of cases, the limited timeframe to assess each claim, and insufficient timing and funds to properly prepare witnesses and evidence. For similar reasons, preparing for Court would likely have been even more difficult for claimants.
- 5.22. The awards made by the Compensation Courts did not specify the exact lot of land and required the claimants to negotiate with Wilson (as Crown Agent) for the specific

lot. The 'unsettled state of the district' was blamed for the delays in formalising many of these awards. The exact details of these claims or why they remained outstanding remains unclear. Wilson was recommissioned in 1871 to finalise these unsettled awards. But for many successful claimants, negotiations continued until 1872. For some the wait to formalise their land title took until 1878.

- 5.23. By 1874, the awarded lands had largely been gazetted for the Bay of Plenty District, although not all titles had been formalised. Cumulatively, 96,261 acres had been awarded to 1,074 'loyal' Māori and 104,952 acres had been awarded to 1,717 'surrendered rebels'.
- 5.24. It is difficult to ascertain an accurate figure for how many acres of these returned lands fell within the Inquiry District. My report includes a table (Figure 16) which collates 35,500 acres of awards that appear to fall within the initial Inquiry District. This suggests that the Government returned as little as one-quarter of confiscated Māori land within the initial Inquiry District through the compensation process. However, the revised Inquiry District encompasses a greater area and will include further awarded lands.
- 5.25. What is clear is that the bulk of the lands awarded were issued as reserves by Wilson during his out-of-court negotiations. Whakatōhea received the largest reserve at Ōpape, with at least 20,787¹⁰ acres, around April 1866. The reserve was awarded to the 'surrendered rebels' of Whakatōhea. Almost the entire iwi was expected to sustain themselves upon lands known to be of poor quality and solely within an area previously occupied by just one hapū, Ngāti Rua. The Government did not address how they expected the Ōpape Reserve to be distributed or shared between the eligible hapū of Whakatōhea until 1879. As this falls outside the relevant timeframe of the report, it is not discussed here.
- 5.26. The total coastline returned to Whakatōhea was a mere fraction of that which they had occupied previously and would have inhibited the gathering of kaimoana which they utilised for sustenance and trade. An absence of both fertile lands and coastline would inhibit Whakatōhea's attempts to rebuild their earlier prosperity.
- 5.27. Besides Ōpape, Wilson also awarded a 50 acre lot in the Ōpōtiki Valley to Whakatōhea rangatira Rānapia Te Ūatahi without condition. As well as five 50 acre lots in Tirohanga which were provided to Whakatōhea rangatira on condition they remained loyal to 1 January 1870. These rangatira included Witiria, Reweri Te Rangimātānuku, Awanui, Rānapia Te Ūatahi, and Piri Te Makarāni. Why they were selected over other rangatira and members of Whakatōhea is not revealed in the sources consulted.
- 5.28. Ūpokorehe, which the Government perceived to be part of Whakatōhea, also shared rights at Ōpape. Additionally, the 'loyal' and 'surrendered rebels' of Ūpokorehe received 13 acres of land at Hokianga Island and 1,073 acres at Hiwarau for 48 and 66 benefactors respectively. These were located at Ōhiwa Harbour, just outside the

¹⁰ Initially described as 20,290 acres.

Inquiry District (but within the revised Inquiry District boundary).

- 5.29. The Ngāti Ira hapū of Whakatōhea were also awarded two sections in trust around Ōpōtiki with 64 named benefactors. The first section was 300 acres, the second was 102 acres.
- 5.30. The neighbouring iwi of Ngāitai also received two substantial awards in trust of 9,458 acres for 150 benefactors at Waiohoata and Hakuranui (Tōrere) and 2,411 acres for 173 benefactors at Awaawakino.
- 5.31. Wilson also discussed an additional 6 acre lot awarded to Whakatōhea around Ōpōtiki as an area where they might reside when visiting Ōpōtiki. However, I was unable to identify this award in the schedule of awards.
- 5.32. Awards from the Compensation Court generally involved smaller lots of land which were awarded to rangatira and other named individuals. Some rangatira were issued small 0.25 to 1 acre town lots, or as much as 100 acres rurally. However, most rural awards for individuals were for 15 to 50 acre lots. These awards and their recipients are listed in Figure 16.

6. Conclusion

- 6.1. Following the killing of Reverend Völkner in 1865, the colonial government used the pretence of ensuring the security of the region to open up the best lands for Pākehā to occupy and farm in the north-eastern Bay of Plenty. In pursuit of the killers, the colonial forces treated all Māori in the region as ‘rebels’ destroying the settlements and economy that Whakatōhea and Ūpokorehe had established on their customary lands.
- 6.2. The New Zealand Settlement Act 1863 and its amendments were then used as blunt tools to legitimise the blanket confiscation of Māori land. Within the inquiry district the peoples of Whakatōhea and Ūpokorehe all suffered the loss of customary lands, as they were all treated as ‘rebels’ regardless of how tangential their involvement with Völkner’s death may have been.
- 6.3. Compelled to surrender to the authority of the Crown, some lands were returned through the problematic out-of-court negotiations and the Compensation Court. But it was a fraction of the area and quality once held by Whakatōhea and Ūpokorehe and was insufficient to reestablish the economy and wealth they had previously maintained.