

**WAI-1750
North-Eastern Bay of Plenty District Inquiry**

**WAR AND RAUPATU
1840-1871 REPORT**

Presentation Summary

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CONTENTS

1. <i>Pre-1865 Land Transactions</i>	3
2. <i>Old Land Claims Commission</i>	5
3. <i>The Role of Christianity</i>	7
4. <i>The Pre-1865 Position of Māori in the Commercial Economy</i>	10
5. <i>The Relationship with the Crown prior to 1865</i>	12
6. <i>Völkner and the Crown</i>	15
7. <i>The Death of Völkner</i>	16
8. <i>Crown Decisionmaking</i>	18
9. <i>Crown attitudes and actions towards Pai Mārire</i>	20
10. <i>The Ōpōtiki Campaign</i>	22
11. <i>Crown Motivation for Confiscation</i>	23

1. The War and Raupatu Report has been written in accordance with a research commission recorded in memorandum-directions of the Tribunal dated 23 July 2021 (Wai 1750, #2.3.8). The Project Purpose was to provide further research on the period leading up to and including the war and raupatu. A list of specific research questions and issues to be addressed were identified in the research commission. This presentation summary will provide an overview of the findings in relation to these questions and issues. The report provided evidence in relation to all of the research commission's questions and issues with the exception of those on confiscation and compensation which already were fully dealt with in Jane Luiten's report on the 19th century administration of raupatu lands. Aside from the questions/issues in the Project Brief for the commission, there are additional findings in the report relating to pre-1865 land transactions and their processing by the Old Land Claims Commission.

1. Pre-1865 Land Transactions

2. Prior to 1865, two significant land purchases took place within the Inquiry District. Situated on the west and east side of the Waioeka River, these purchases, involving around 20,000 acres, were completed in 1840 by CMS missionary John Alexander Wilson. One of these purchases was for a CMS mission site while the other was a private purchase for Wilson and two other missionaries who were stationed at Tauranga. There is comparatively little detailed contemporary evidence on these purchases and some of the evidence that is available is problematical. Within the report there has been a close consideration of the available evidence. As a result, a proposed sequence of events was arrived at and this is set out in the report at pages 1051-1052. The conclusion reached is that the missionaries participated in a fraud by claiming as their own the land purchased on the western side of the Waioeka River that initially was intended for the CMS mission. As part of this fraud, deeds were forged as to the dates they carried (27 and 28 January 1840) as Wilson, the signatory to both deeds, was not in Ōpōtiki at the time but had returned to Tauranga. The missionaries then made payments on the land transactions in March 1840, after the date allowed by proclamation, but recorded these on the deeds as if they had been paid in January.
3. Putting aside the Pākeha paradigm of legality, where do the transactions sit in relation to customary land tenure? The first aspect to consider is the possible nature of Wilson's discussions with Whakatōhea at Ōpōtiki. The Pakihi purchase (which was the CMS mission

site) was large. Usually mission stations are a few hundred acres only, but Pakihi was estimated at 4,000 acres (and eventually found to be 11,470 acres). The land included in this purchase lay between the Waioeka and the Waioetahi Rivers and stretched from the coast back into the hills. The size of the transaction is explained by Wilson having been instructed by the CMS to implement a new policy of purchasing as much land as possible to be held by the Society in trust for the former owners. Although the specifics of this policy, and how exactly it was to be operationalised in a future colony, had not been fully worked out, the idea of purchasing land to be held in trust was put forward to potential vendors within the context that Māori were in danger of all their land being acquired by speculators and that one way they could protect themselves was to enter into a trust transaction with the CMS. Despite those of Ōpōtiki having not previously been involved in a land transaction, word probably would have reached them from the north that dozens of land transactions were occurring there as the result of the land purchasing boom that took place in 1839. So the warning may have been considered quite seriously especially when coming from a trusted missionary source.

4. When it comes to considering the Ngaio land transaction, which at the time of negotiation was being acquired privately for the three missionaries, it is harder to ascertain the possible understandings of vendors as there is no mention of the transaction at all in Wilson's journal. Presumably, Wilson would have made some distinction from the trust land of Pakihi but it is not clear whether this differentiation would have been appreciated. After all, the same person was making both arrangements, the persons he was acting for were also missionaries and, as Treaty historiography and past Tribunal findings indicate, the Ngaio transaction, from the Whakatōhea perspective, would be proceeding on a basis where mutual benefits were expected to occur within the context of an ongoing relationship.
5. That these land purchases at Ōpōtiki can be seen more within the context of customary land transferrals than as absolute sales is shown by available evidence. In the aftermath of the purchases being completed, areas on both sides of the Waioeka continued to be occupied and utilised by Whakatōhea at Ōpōtiki. Areas within the purchase boundaries were cultivated, wood was utilised from certain stands of bush, while flax was harvested right across the large swamps that were located on the land. As was revealed before the OLC Commission, various claims for payment were still being raised over the land and, subsequently, when the Pakihi Block was surveyed, one group of owners simply excluded

around 5,000 acres of their land from the transaction. The transactions, therefore, were not full and final when completed in 1840.

2. Old Land Claims Commission

6. As a result of the Crown's Old Land Claims policy and processes, the land transactions that Wilson negotiated with Ōpōtiki Māori were converted from agreements that were subject to customary law into titles derived from the Crown that supposedly were independent from the original landholders.
7. There is a good deal of Treaty historiography which has pointed out a range of generic and systemic problems within the OLC process, These have included: that the primary purpose of the OLC legislation was not to protect Māori interests but to finalise land titles for Europeans; that where transactions were correct in their details and supported by 'vendors', it was presumed that all customary interests had been extinguished and the title was therefore held by the Crown; that the Commission never undertook adequate inquiries into key matters such as who were the rightful owners and what did they understand their transactions to mean; that despite the fact that OLC Commissioners were aware that Māori had not understood their land had been fully alienated, customary land arrangements were converted into titles held in accordance with European concepts of law.
8. Aside from these general and inherent difficulties with the OLC process, the way in which the Commission dealt with the CMS/Wilson transactions at Ōpōtiki added further layers of specific and localised problems. Clearly, the Commission was not equipped to deal with the outright fraud of the Ōpōtiki transactions as it had no mechanisms to deeply investigate the claims brought before it. Instead Commissioners relied on sworn testimony being true (not dishonest), on signed deeds being legal in the details they recorded (not fraudulent) and on presented written documents being authentic (not fabricated). On the other hand, in relation to the Ōpōtiki transactions, the Commission did not pick up on several obvious inconsistencies such as deeds bearing dates that were different from claims of when purchases allegedly took place. The Commissioners were not the only ones at fault in relation to the Ōpōtiki claims with other officials including the Governor playing a role. A list of problems with the investigation of the Ōpōtiki claims appears in the report at pages 1055-1057. They included that the application for the Pakihi claim was accepted well after the due

date; that Pakihi had ongoing protests over specific pieces of land that were ignored by the Commission; that Pakihi had a current complaint about payments not being sufficient; that Ngaio, despite having been reoccupied, was found to be a bona fide purchase; that a reserve of all flax swamps in Pakihi was not recorded in the Commission's findings; that the Governor, for Pakihi, ignored the formula for valuating payments and awarded the full 3,840 acres being claimed; that, for Ngaio, despite the Commissioner recommending against a grant, the Governor ignored this and recommended a grant be made.

9. As a result, the OLC Commission process failed in its duty to properly investigate the Ōpōtiki transactions and it did not adhere to its own rules. This was not the worse part, however. It was the Crown's OLC processes of scrip awards and the retention of surplus (ie unawarded) land that would eventually cause the most significant impact in the District. When the missionary Brown, in the mid-1840s, chose to relinquish his award and take scrip, his interest of 853 acres was assumed by the Crown. When, in 1852, the Pakihi block was surveyed and found to be of 11,470 acres in area, the Crown retained the additional 7,630 acres over and above the 3,840 acres awarded to the missionaries.
10. These developments were soon communicated to Whakatōhea at Ōpōtiki by Wilson within the context of land disputes he was having with the local people. He used the Crown's presence on the land through the scrip exchange as a threat to curb what he saw as 'bad conduct' by Whakatōhea in relation to the Pakihi Block. Furthermore, the acquisition by the Crown of a huge amount of surplus land appears to have been communicated to Whakatōhea by the Government surveyor. It is the submission of the report that much of the recorded Whakatōhea anger towards the Crown recorded from the beginning of the 1860s, including references by Whakatōhea to their land having been taken away by the Crown, referred to the scrip and surplus land claims of the Crown in the Pakihi block which had been long known of. The Crown's claims motivated and radicalised Whakatōhea in the allegiances they held and the actions they began to take in the early 1860s. When Whakatōhea told Völkner in 1864 that they were fighting to stop their land being taken, it was the Crown land claims that they were referring to. And when the Pai Mārire message accused missionaries of stealing land and Whakatōhea agreed with this statement it was the Wilson purchase of Pakihi that was in their minds.

3. The Role of Christianity

11. One of the questions asked by the Waitangi Tribunal as part of the commissioning direction for this report, relates to the role of Christianity in the District in the period prior to the war.
12. Christianity was present in the Inquiry District from 1840. From that time two missions – CMS and Roman Catholic – operated within close proximity to each other at Ōpōtiki. In both cases the missions had times when little resource was put into missionary efforts. The CMS station never had two resident brethren as planned and an ordained minister was not in residence until 1852 and then for two years only. Accounts record how the lack of an ordained minister impacted on the progress of the mission. From 1854 until the arrival of Völkner in 1862, Ōpōtiki was serviced only by a visiting minister once every six months and for a few days only. As for the Roman Catholic mission, the station was staffed by resident clergy until 1850 when the Marists generally withdrew from missionary work in the north. Thereafter it appears that only visiting priests ran the Catholic mission at Ōpōtiki.
13. Both the CMS and Catholic missionaries evaluated the progress of their missions concluding that they had not been as successful as hoped. Numbers who had converted were not as high as expected, attendance at services and schools were not as numerous or regular as expected and the depth of belief among those who had converted was doubted. The respective missionaries needed to find scapegoats for what might have been their own failings. They did so in two places.
14. Firstly they blamed each other for undermining their respective teachings. There is no doubt that the competition between the two missions was strong and that some fierce arguments over doctrine would be had. The language employed when arguing over doctrine is somewhat shocking. These diatribes were played out in public before parishioners who then subsequently adopted similarly fierce language when supporting the religion they had chosen. On several occasions disputes over doctrine came close to physical violence. Despite this, there is not enough information available to fully assess the extent that sectarianism divided the Whakatōhea community at Ōpōtiki. While there are several examples suggesting this (during the signing of the Treaty, over Chauvet's house, in the records of some hui held), there are also examples of the community meeting or acting together to discuss significant issues without there being any indication of a rift (eg when various local public works were

being considered, when hui were being held to go to war in 1864, when a powhiri was held to welcome Pai Mārire, when responding to the invasion by the Crown's soldiers).

15. Another matter to consider when assessing the impacts of sectarianism on the success of the missions is that aside from those who did choose a Christian religion to follow, there is a rather significant and persistent group who remained non-Christian. As at 1850, after a decade of the presence of the two missions, 27% of the population remained non-Christian and later records record a 'slipping backwards' in the Christian community. The explanation for this may very well lay in sectarian competition and the vehemence of debate may lie behind a recorded "hardening" of attitude against both religions.
16. The second feature blamed by missionaries to explain why their missions were not succeeding as well as hoped for was the alleged obsession of their parishioners with trade as people were away from the stations at Pākōwhai for long amounts of time when tending their inland cultivations. The missionaries also claimed that trade focused the minds of parishioners on worldly rather than spiritual matters. There is no doubt that trade was a significant feature at Ōpōtiki, one that grew over time and required significant commitment of resources and time from those involved. Therefore, the missionary record of what they say is an intense focus with advancement and progress is probably correct. Whether this equated with less spiritual intensity as claimed by the missionaries is not possible to assess.
17. There is a further matter to raise when making an assessment of the possible impacts of Christianity in the Inquiry District. The evidence on Wilson's land purchases reveals a controversial origin and an ongoing troubled relationship over the use of the land. Wilson initially dealing in January 1840 with only one group of owners resulted in an outcry which required him in March 1840 to acknowledge the interests of all claimants by the signing of a new deed with representatives of all hapu and leaving the rangatira to distribute the payment among the 'thousand claimants'. Despite the land transaction having been concluded, the experience seems to have caused sufficient rupture for all Whakatōhea at Ōpōtiki to ask Pompallier, when he visited soon after, to compile a document declaring that all persons had interests in land but that no more land transactions should occur.
18. Furthermore, it appears that Whakatōhea at Ōpōtiki continued to come into conflict with Wilson in relation to his land. This conflict seems to have arisen in cross-cultural misunderstandings over the land transactions. Māori actions presumably reflected their

cultural perspectives and understandings of what the land transactions were – not a sale but a right for Wilson and the CMS to occupy. In Wilson’s view it was simply ‘bad conduct’ that had been occurring since the land had been purchased. From Wilson’s perspective Whakatōhea tried to repudiate their transactions by reoccupying the eastern Ngaio block and by continuing to use resources on the Pakihi block. To exacerbate matters, the Roman Catholic priests directly criticised Wilson’s purchase as evidence that he was primarily motivated in his own interests. To make matters worse, Wilson’s threatening of Whakatōhea with possible Crown action would not have enamoured him or missionaries in general to the people of Ōpōtiki.

19. Further evidence that the CMS were not favourably viewed by Whakatōhea is seen in relation to the Ngaio block. Wilson noted in 1844 that Ngaio was being reoccupied by its owners. Therefore, when the CMS hierarchy sought to use this occupation as an opportunity to divest themselves of this land for which they could not get title, they also sought to have their purchase money repaid. Although Whakatōhea agreed to this, their viewpoint about the CMS mission was revealed when they initially refused the CMS request for a small plot of land being made available for a mission station. Ultimately, the CMS made the retention of a mission station site a deal breaker which Whakatōhea had to accept for the CMS to give up their claims to Ngaio. This may have been another source of resentment.
20. Given Wilson’s behaviour on Pakihi and the CMS actions over Ngaio, it would not be a surprise that support for the mission waned especially since the CMS could not even commit resources to place a resident missionary in the district. Not unexpected then, by the late 1850s, congregations were reported by visiting missionaries as being surprisingly small after almost two decades of effort. And by 1860, when Crown officials visited, angry hui raised a question over the value of missionaries especially as, at Ōpōtiki, it had resulted in claimed land takings. Despite the efforts of Völkner to repair much of the damaged relationship of the past, when the Pai Mārire ope reached Ōpōtiki in 1865 and lectured on the evils of missionaries, their tendency to acquire land and their role as a gateway for the Crown to acquire further land, they found a receptive audience among Whakatōhea.

4. The Pre-1865 Position of Māori in the Commercial Economy

21. One of the questions asked by the Waitangi Tribunal as part of the commissioning direction for this report, deals with the participation of Māori in the Inquiry District in a commercial economy in the period prior to the war. There is a comparatively large amount of source material available on trade although it essentially comes from Ōpōtiki with only an occasional mention of Ōhiwa and Torere. Evidence on trade in Ōpōtiki comes from a series of statements made by missionaries and officials after 1840. This record indicates that working at the production of trade goods occupied a significant amount of time, that it brought an increased standard of living and that an infrastructure was beginning to rise. In addition, a quantitative newspaper shipping sample has been used to gain an idea of the volume and nature of trade being shipped out of Ōpōtiki from the 1840s to the 1860s. For reasons noted in the report, this sample should be seen as providing a minimum indication of the true volume of trade.
22. A key element of the participation of Ōpōtiki Māori in trade was the ownership of vessels. Over the period under consideration there were 30 ships known to have been built at Ōpōtiki or possibly built elsewhere but owned at Ōpōtiki or Ōhiwa. Of these, 23 were owned by Māori at various times. These ships made at least 15 voyages in most years. The crews of these ships were small, sometimes only two persons. The fleet of trading ships at Ōpōtiki increased over time. In 1843, it was reported that there were two small vessels owned by Whakatōhea at Ōpōtiki that “frequently” were at the Bay of Islands and Auckland. By 1850, there were six vessels owned by Whakatōhea at Ōpōtiki “constantly running to Auckland or the Bay of Islands”. In fact, in 1849, Wilson expressed the view that, as the crews of these vessels were always varying “most of the male population during the year have some intercourse with these places.” By the late 1850s, the local people possessed twenty trading vessels. By November 1861, Māori ownership at Ōpōtiki was 13 vessels.
23. The quantitative newspaper sample also provides insight into the trading economy at Ōpōtiki by recording the types of goods exported and their volumes. The expected cargoes of pigs/pork and/or potatoes are recorded on almost every trip. Additional goods that regularly featured included scrapped flax, wheat, maize and onions. Over the 15 years from 1850 to 1864, the sample records just over two thousand tons of produce was shipped from Ōpōtiki with an average of 139 tons a year. There is virtually no year where less than 50 tons of cultivated food is exported. Often between 100 and 200 tons is exported. It has been

calculated that almost 3,500 pigs were involved in the trade of live animals or pork products. Evidence shows that fully five months of the year was required to tend cultivations. In 1844, Wilson noted that the tending of cultivations took all the attention of the people. In 1847 he noted of local Māori: “They labour incessantly at their cultivations.”

24. The qualitative evidence about cultivations and shipping clearly indicates that trade was becoming an integral way of life for Ōpōtiki Māori. In 1845, Wilson, reporting on his congregation, referred to “the great facilities they now possess of acquiring property”. Similarly, in 1847, Wilson believed “the sole energy of the inhabitants seems directed toward acquiring property.” The following year, he recorded “the great increase of property” by his parishioners. By 1854, Davies recorded: “The natives everywhere, with very few exceptions, seem more engrossed than ever in laying up for themselves treasures upon the earth.”
25. It is difficult to evaluate exactly how well Ōpōtiki Māori did from their increasing involvement in the trading economy. The newspaper shipping sample shows that there is no year after 1850 when the exported goods recorded in the sample earned less than £800. Using this very minimum indicative sample, it has been calculated that between 1850 and 1864 goods with an indicative value of £27,408 were exported out of Ōpōtiki. It is much more difficult, however, to know what the products actually earned for Whakatōhea. One reference indicates the traders at Ōpōtiki were paying to Whakatōhea around two thirds the wholesale value of their goods which was still seen as a good return.
26. On the other hand, by 1860, limitations on the economy were increasingly being recorded. Ships and other machinery were not being serviced, necessary replacement parts could not be obtained or the expertise to repair things was not available. There is some record that in places the soil was becoming exhausted. There is also comment that expertise was needed to better process goods in a way that might create added value. By 1860, the greatest complaint from Whakatōhea was that trade was not regulated and that middlemen traders were unfairly impacting the value of payments being received.
27. Despite the limitations that were present in the local economy, and although Ōpōtiki Māori may not have been receiving optimal returns for their participation in a trading economy, it was the view of observers that Whakatōhea at Ōpōtiki appeared to be prospering. By 1849 Wilson recorded: “The increasing prosperity in the temporal condition of the Natives is generally apparent” and he noted that they were “fast acquiring property.” Clarke, visiting

Ōpōtiki in 1850, recorded a “large trade” with Auckland. J.A. Smith visiting Ōpōtiki in 1857, described the local people as “certainly the most industrious I have ever met with in this district.” He noted the accumulating wealth was being used to build local infrastructure with three bridges for carts having been built across streams and swamps “to open the country back to the wooded ranges”. In May 1858, the *Maori Messenger*, referred to the chiefs of Ōpōtiki “convening meetings to decide upon measures to be adopted for the general good of the tribe, laying out roads and making regulations respecting them, making arrangements for the erection of mills...” By November 1861, Crown official Turton reported the ownership of 50 ploughs, 26 drays and carts, miles of good roads, well-crafted bridges and a water mill that cost £800. The following year, in June of 1862, Hunter Brown recorded the wealth of the people noting “all European goods are more plentiful amongst them; they dress better, have more horses, ploughs, sledges, and even drays at Ōpōtiki; they have more tools and utensils; each place has several fine large canoes, perhaps two or three whale-boats...”

28. After 1860 the fortunes of Whakatōhea would reverse. Ships were sold off or boats and waka were destroyed in the war. Food supplies were consumed by the armies of other groups who passed through the area on their way to the western areas of warfare. The traders fled and a blockade was put in place by the Crown. Remarkably, however, when the Crown’s soldiers occupied Pākōwhai in September 1865, they marvelled at the wealth they saw in terms of food, stock and goods. Either Whakatōhea had quickly bounced back, or the wealth that had been built up before the 1864 war had not come close to fully dissipating.

5. The Relationship with the Crown prior to 1865

29. The next question asked by the Waitangi Tribunal as part of the commissioning direction for this report, is to provide an assessment of the period prior to the war in respect of the engagement that had occurred between the Crown and tribal leaders, including the nature and subject of this engagement.
30. As noted in the Introduction to the report, although the Treaty was signed at Ōpōtiki and Torere early in 1840, there is little indication of a close relationship between the Crown and the tribes over the two decades thereafter. The Crown’s OLC policy was rolled out at arm’s length and there is no direct evidence of Whakatōhea at Ōpōtiki interacting with Crown officials in relation to surplus lands or Old Land Claims. Indeed, Whakatōhea discover the

Crown's acquisition of land in their rohe through Wilson and a contracted surveyor. For the few other examples of Crown policies being implemented in the Inquiry District, (eg vaccination of the 1850s), the presence of the Crown was passive or services were delivered at arms' length. The Crown had no judicial official resident in the Inquiry District before 1865. It was the introduction of the Magistrate system that brought Crown officials into the District with annual fact-gathering tours taking place from 1859.

31. Nevertheless, the advent of war in Taranaki in 1860 made the Crown rethink its native policy. Efforts were made to contact iwi and hapū all around New Zealand in order to monitor where their allegiances stood. Following the conference at Kohimarama runanga and assessors were appointed around the country including at Ōpōtiki and Tunapahore. It appears that these measures were introduced without any close assistance or guidance. When, in October 1861, Resident Magistrate Clarke visited Ōpōtiki, he viewed the actions of local runanga leaders dispensing justice as overstepping the mark. The issuing of heavy fines he equated with muru. Aside from criticise, however, Clarke did little to assist. When H.H. Turton toured the district, he worked with the local runanga to streamline their administration down to a 24-member committee ensuring that 12 members were Protestant and 12 were Roman Catholic. When Clarke visited the district again in December, he found the runanga had fallen out amongst themselves. Nothing further is recorded.
32. In the meantime, Whakatōhea and others within the Inquiry District would consider the Crown's actions taking place in other parts of the country. In 1861 Clarke noted that Whakatōhea had sent their own observer to Taranaki to directly report on the situation there in relation to the war. In addition, they had received several emissaries from Waikato. Evidence from fact-finding missions of Crown officials records the general dissatisfaction of Whakatōhea and others in the Inquiry District over a lack of assistance from the Government. To support their economy Whakatōhea and others needed artisans and tradesmen to repair machinery and boats and to work with their products to add value through additional processing. Whakatōhea proposed that if they made several small sections of land available, would the Government liaise to procure tradesmen (such as a miller, a wheelwright, a baker, a carpenter, a blacksmith, and a leather worker) to come and live at Ōpōtiki. Although Turton thought this a sensible idea, there is no indication whether this request was ever acted on. While wanting new Pākehā to come and live among them, Whakatōhea greatly complained about the influence of Pākehā who were already at Ōpōtiki. These men were traders who Whakatōhea had learned were buying their produce cheaply

from them and selling it at higher prices in Auckland. Whakatōhea wanted the government to appoint a trader who would adopt a fairer approach. Aside from areas where Whakatōhea wanted Crown actions, there were other areas where the Crown had taken actions which were complained of. These included the bans brought in on alcohol, arms and ammunition.

33. Matters came to a head at a meeting with Crown officials in June 1862 when several strong statements were made. The Treaty of Waitangi was repudiated, all Whakatōhea claimed to be 'kingites', Grey's words were no longer believed and a sourness was expressed over land that had passed to Pākehā. Although this later comment may be a general reference to land acquisition by Pākehā around the country, as noted previously, it also may relate to the 11,000 acres of land to the west of Ōpōtiki that was claimed to have been acquired by private and Crown interests. Despite these comments, officials advocated for Grey's 'new institutions' with the result that it was agreed that the new systems would at least be tried.
34. Although, therefore, by mid-1862 there is some basis for the beginning of a relationship, by the end of 1863 all had changed as Whakatōhea eschewed their contacts with the Crown and threw their lot in with Kingitanga instead. On Christmas Day, the letter brought to the chiefs of Whakatōhea containing an appeal from Wiremu Tamihana for assistance resulted in serious consideration being given to the request. This letter would have been written in the aftermath of the 20 November defeat at Rangiriri and the occupation by Crown soldiers of Ngāruawāhia on 8 December when matters at Waikato must have seemed bleak. As Völkner noted "This letter has unsettled the Natives of Ōpōtiki and up the coast more than any they have had."
35. As Whakatōhea considered the ramifications of the letter they had received, on 21 January 1864, General Carey and 600 troops landed at Tauranga. This brought an additional, localised dimension to the issues being considered. By 30 January 1864, a decision was made to fully support the King movement by direct action. On 5 February 1864, a Tairāwhiti contingent, including 250 Whakatōhea, headed out westward from Ōpōtiki. Although the Whakatōhea contingent returned in a short time, in early April another contingent of 700 set off and travelled through to Maketu where it was eventually defeated in the battle of Te Kaokaoroa after which Whakatōhea at Ōpōtiki faced after effects of disease and famine.

6. Völkner and the Crown

36. The Waitangi Tribunal posed a series of questions about the impact of Völkner's relationship with the Crown, the role of any missionary reports, what the Crown did with the information and whether any Crown policies, decisions and actions were influenced by the advice.
37. There really is no evidence of either CMS or Roman Catholic missionaries being involved in the events leading up to war other than in the following two instances:
- On Christmas day 1863 Father Joseph Garavel brought a letter among Whakatōhea at Ōpōtiki from Waikato leader Tamihana which called on Whakatōhea to come to Waikato to assist reverse the latest impacts experienced there with the defeat of Rangiriri and the occupation of Ngaruawahia. Garavel knew the contents of the letter he was carrying.
 - Within the context of the furore caused by the receipt of the letter carried by Garavel, over January and February 1864 Völkner wrote seven letters to the Governor revealing political and military secrets.
38. In consideration of the Völkner letters it can be said that they were written at a time of high excitement and the information given would have been about matters that Whakatōhea would not have wanted the Crown to know. At this time there is evidence that Whakatōhea at Ōpōtiki took steps (blockading the harbour and roads out of the area) to ensure information did not get out to the wider world. As to the effect of Völkner's information on Crown actions, there is no specific record that it brought change or influenced decisions. From a military point of view Völkner's letters, despite providing information of troop movements, were probably not timely enough to effect events as they were developing. In addition, the Government had other sources that provided the same information. Völkner's information may, however, have had a longer term effect as the letters leave no doubt of the position of Whakatōhea in relation to Kingitanga, the Government and the war. Henceforth they would be a group to watch.

7. The Death of Völkner

39. The Waitangi Tribunal posed a series of questions in the commissioning direction in relation to the death of Völkner including whether Whakatōhea were involved and to what extent, and who was responsible for Völkner's death.
40. In the report the opportunity was taken to study the matter closely. A great deal of effort was therefore put into collecting multiple eye-witness accounts and considering these closely. As the sources do not all agree regarding the details or events recorded, it was also important to form a view on which source could be considered reliable (and which were not). The analysis in the report aimed to recreate an event-by-event reconstruction of what took place between the arrival of Pai Mārire in Ōpōtiki on 24 February through to Völkner's death on 2 March 1865. A summary discussion of these events is presented in the report at pages 509-520 and a bullet-point chronology of events features at pages 1076-1081.
41. The first of the Tribunal questions regarding Völkner's death relates to the involvement of Whakatōhea in the events that occurred from 24 February to 2 March. As noted in the report, dictionary definitions for the word 'involved' simply means being at and part of an activity or event without any comment on culpability. Therefore, a summary of Whakatōhea involvement would be as follows:
- the people and chiefs of Whakatōhea welcomed and invited Pai Mārire to stay.
 - with few exceptions, Whakatōhea converted en masse and participated in the rites and tikanga associated with Pai Mārire under instruction from their prophets
 - Whakatōhea would have been part of the crowds present when the *Eclipse* arrived and prisoners were taken off the ship.
 - Whakatōhea would have been present in large numbers at the 1st hui of 1 March and the 3rd hui of 2 March which considered the fate of the prisoners, while their chiefs were at the 2nd hui held on 1 March.

- members of Whakatōhea may not have made up the unarmed escort that took Völkner off the Eclipse and there is no evidence they guarded the prisoners. Several Whakatōhea persons were part of the escort that led Völkner to his death.
- while a specific group of Whakatōhea (the Catholic congregation) and several leading individuals of Whakatōhea are recorded as absenting themselves from witnessing the hanging, there would have been others of Whakatōhea who likely were in attendance.

42. When considering the Tribunal question of who was responsible for Völkner's death, the word 'responsibility' carries the dual link of being the cause of something and being able to be blamed for it. There are several individuals and groups to consider:

- Kereopa: He stated that Völkner would be killed if he came into Ōpōtiki. After Völkner's arrival, Kereopa demanded for this to occur and threatened Whakatōhea with spiritual or physical violence if they disobeyed the demand or tried to save Völkner. Kereopa gave the instruction for the execution to go ahead.
- Patara: He often escapes being held accountable for the killing due to his absence from Ōpōtiki when it occurred. However, Patara, with Kereopa, continually said that if Völkner arrived in Ōpōtiki he was to be killed. In his position as leader of the Pai Mārire, this is of significance when assigning responsibility.
- the Ngāti Awa chief Wepiha Te Pono: If Te Pono's account of events is believed then he bears no responsibility. If the testimony of several witnesses is believed, then he bears similar responsibility as Kereopa as he formed the military escort for Pai Mārire and was said to be a partner with Kereopa in the events that occurred.
- Whakatōhea: there is no uncontradicted evidence of a chief of Whakatōhea calling for the execution of Völkner. When Whakatōhea at Ōpōtiki as a group is considered, while all variations of individual opinion and actions can be guessed at during these events, there is no evidence of approval as a community. Whakatōhea were never specifically recorded as giving formal consent for the execution of Völkner despite threats of what would occur if they disobeyed Kereopa. While, on

the other hand, they did not act as a group to save Völkner, this took place under continual and sustained threats of violence. While the full picture of individual action can never be known, there are numerous examples of Whakatōhea leaders, individuals and groups absenting themselves from the execution.

- the armed escort party: at the time of the 1866 trial, membership of the escort party was equated as having culpability for the hanging of Völkner. Several of the individuals in the escort party can be identified as being of Whakatōhea. The fact that evidence was before the 1866 Court that Kereopa had threatened all who did not obey with violence did not appear to matter. If the armed party themselves or their families and community were under threat if they disobeyed, then the degree of their responsibility is in doubt.

8. Crown Decisionmaking

43. Among the series of questions posed in the research commissioning direction was one asking what discussions and decisions took place in the six months between Völkner's death and the attack on Ōpōtiki and how did the Crown justify a military response? Crown officials immediately and always thought that the response to the situation in Ōpōtiki would be a military response. Thereafter, discussions about the Crown taking action in Ōpōtiki were always about the sending of an armed force. Presumably this was on the basis that the force might be facing a whole community of Pai Mārire converts as suggested by the information that was coming out of Ōpōtiki from the beginning.
44. Initially, of course, the Crown response was shaped by the information that despite Völkner having been killed, there remained several hostages held at Ōpōtiki. The Crown acted quickly. The first news of the events out of Ōpōtiki was received by officials on 6 March. By 9 March, however, although officials were certain that the news of Völkner's death was true, they were getting various reports about the location of the hostages. On 10 March, therefore, a ship was sent to the East Coast to find out more as Turanga was believed to be the place where the hostages were being kept. When it was learned the hostages had remained in Ōpōtiki, a diplomatic mission was sent there. However, it was only the result of a series of accidental circumstances, that a rescue was achieved.

45. Thereafter, as early as April, Crown Ministers stated their intention to send a force when they had one to hand as all resources were committed at the time in the Whanganui campaign. In the meantime the Crown issued the April Proclamation against Pai Mārire, continued to gather information, (as with the May cruise of the *Eclipse*) and waited for developments in Whanganui to reach a point that a military force was freed up. This became available by July and the Government announced their intention in Parliament in August to send an expeditionary force. No evidence has been located of discussions or other decisions taking place over the six months between Völkner's death and the attack on Ōpōtiki. The matter was as simple as stated above. The killing was learned of; the intention was reached to send a force when one was available; when one became available one was sent.
46. If there was written communication between Crown officials and Whakatōhea at Ōpōtiki it has not been discovered. Yet evidence is available from the March and May voyages of the *Eclipse* that it was not difficult to make contact with those onshore at Ōpōtiki and hold discussions under a flag of truce. These examples raise the question of whether some sort of diplomatic mission, where the Crown communicated its objectives to those at Ōpōtiki, would have been quite possible and easily achieved had the decision been made.
47. While it was always clear that a military force would be sent, the aim of the mission is not discussed in detail before instructions are given on the eve of sailing. Instead, often with a lack of clarity, government members generally indicated that the mission would be to capture the murderers of Völkner. There is never a clear idea stated, however, who the murderers were or how widely those who resided at Ōpōtiki were implicated. At times, the 'murderers' are viewed as being a very small group consisting of a few individuals. To meet any eventuality, from August, the Government designed a bespoke policy (with supporting legislation), and began to describe Ōpōtiki not as a war, but a police action. As the real situation at Ōpōtiki was not known, the Crown policy right up to the sailing of the expeditionary force seems to be to send a large force, (just in case), to secure the area and then undertake investigations to identify who would be deemed to be the culprits of the murder. Initially, the area would be secured by physically containing the population which was more in accordance with a police action. As the legislation indicated, this was about arriving in the area, declaring that the culprits be turned over and then implementing a process from this point. It is argued in this report, that it was only on the very eve of the expeditionary force sailing that the receipt of intelligence that all at Ōpōtiki were committed to Pai Mārire led to the decision to undertake a full invasion to firstly gain submission as the

priority. The idea was for the army to go to Ōpōtiki unannounced, militarily occupy the district (fighting if required) and only then begin investigations at that point. The passing of martial law was to support this force in its intended judicial activities once at Ōpōtiki.

9. Crown attitudes and actions towards Pai Mārire

48. The Waitangi Tribunal posed a series of questions as part of the commissioning direction in relation to Pai Mārire and the role that Crown attitudes and actions towards Pai Mārire played in the war and confiscation. When Pai Mārire first appeared officials around the country investigated the attributes of the religion primarily with the aim of determining whether it was a force for peace or whether it would in some way contribute to the wars that were being fought. Once Pai Mārire adherents became engaged in fighting, the phrase “Pai Mārire fanatics” was increasingly used by officials and politicians. When bands of prophets spanned out from Taranaki the matter was deemed as serious. The Crown did not understand and therefore feared the objectives of those who supported the Pai Mārire faith as it was seen that the new religion could quickly convert whole formerly Christian populations.
49. Although violence from Pai Mārire soldiers on the battlefield was expected, the killing of Völkner seemed to indicate to the Crown that Pai Mārire adherents might act against civilian populations in outlier areas. The question of what to do about the new religion came very much to the fore. As there was also a concern that adoption of the religion might be spurred on by the Völkner killing, the Crown’s policy toward Pai Mārire soon emerged as complete opposition. This was reflected in the Governor’s April Proclamation declaring the intention to curb the religion’s spread. The war being fought in Whanganui and South Taranaki was seen as one way to deal with the new religion. Enemy combatants being fought against were labelled as ‘Hauhau’ even where this was not necessarily the case.
50. Despite the victory gained in Whanganui and South Taranaki, it was understood that the religion was still spreading around the country. Therefore, as at August 1865, dealing with Pai Mārire remained a very current concern of the Crown. Parliamentary rhetoric held that Pai Mārire was “spreading everywhere” and that its object was “the destruction of the European race.” In the Native Minister’s August 1865 speech on Native affairs, Fitzgerald described the religion as one of the “most noxious forms of parasitic life” and a “horrible insanity”. Nevertheless, the Native Minister was prepared to consider that there may be

gradations in how violent the movement was as he could not believe all adherents were involved in atrocities.

51. Thereafter, government policy emerged to focus on addressing the ‘excesses’ of Pai Mārire which primarily meant acting when murders, such as the killing of Völkner and Fulloon, were committed. Therefore, the objectives of the Ōpōtiki expeditionary force did have a component of being focused on addressing Pai Mārire in the district as it was aimed at those Pai Mārire individuals who had committed a crime. Nevertheless, the Outlying Districts Police Act, despite being a warning to Pai Mārire populations involved in murders, was not specifically worded as such, as the described processes would be used to deal with any population that was harbouring heinous criminals.

52. Although the initial aim was to find and punish Pai Mārire murderers, this report has argued that in respect of the Ōpōtiki campaign it appears that a change occurred within the Government’s objectives in the final moments before the campaign got underway. Prior to this, all policy devices in relation to the campaign and the military strategy outlined in the 4 September instructions from the Defence Minister reflected a clear process of going to Ōpōtiki, demanding the murderers be handed over, and then taking action (including taking land) if this did not occur. Instead, the military strategy that was unleashed at Ōpōtiki was direct military invasion without notification or negotiation with politicians soon speaking in Parliament that there would be (rather than could be) confiscation at Ōpōtiki.

53. To account for this change, this report has looked to the Agassiz statement. Received just before the expeditionary force sailed and shown to officers who would lead the troops, the information in the Agassiz statement effectively implicated all of Whakatōhea at Ōpōtiki presenting them as being fully immersed as Pai Mārire and exhibiting the most aggressive traits including fighting with the Crown’s native allies and promising death to all Pākeha. Whakatōhea at Ōpōtiki were now being presented as a ‘lawless’ Pai Mārire community that needed to be dealt with. This is never specifically recorded as an objective of policy in any document. It does seem, however, to be the basis of the last minute change in policy and practice associated with the Ōpōtiki campaign. It also might explain why any terms for surrender included the requirement of a promise to give up the Pai Mārire religion.

10. The Ōpōtiki Campaign

54. Several commissioned research questions dealt with various aspects of the Ōpōtiki campaign. The answers to these are recorded as pages 1093-1096. The following conclusions relate to the questions about the Crown's military strategy at Ōpōtiki.
55. Originally, the action at Ōpōtiki had, in accordance with the instructions issued, an objective of quickly catching the murderers of Völkner. This was to be achieved through a night manoeuvre aimed at surrounding Pākōwhai Pā and then asking for the murderers to come out. If this did not happen, then the processes of the Outlying Districts Police Act would be used to commence investigations and take the land of those deemed guilty. As noted above, however, on the eve of the Force sailing, the receipt of the Agassiz statement apparently resulted in a (official or unofficial) change and Pākōwhai was simply invaded from the sea in broad daylight. The strategy had changed from one completely focused on being a police action to catch murderers, to one where a supposedly belligerent Pai Mārire community was to be subdued by military invasion before any quest to identify murders would begin.
56. After several days of weather-related calamity, the Force landed, occupied an essentially abandoned Pākōwhai and focused on provisioning and fortifying their position. Few engagements occurred thereafter. Those that did, such as at Tarata on 5 October, resulted from opportunism rather than a planned strategy.
57. Another strategy in place was of negotiating with Whakatōhea. This was soon adopted although it was very organic in its development with the officers of the Force finding their way through trial and (mostly) error. Although the army maintained a readiness to fight when opportunity or necessity arose, negotiations with Whakatōhea to surrender themselves and the murderers was an ongoing feature of the mission. Despite not having a clear idea of who were seen as the 'murderers' of Völkner, or of describing or defining who they were during negotiations, the surrendering of the culprits was always a key focus of negotiations (along with the requirement that any man signing an Oath of Allegiance declared to give up the Pai Mārire faith.) Once surrendered, however, those who came in were released on their own cognisance.

58. Alongside negotiations, and the occasional fight, another strategy adopted by the expeditionary force was to destroy any resource that Whakatōhea potentially could utilise to hold out against surrender. The evidence shows that when the Crown force arrived Whakatōhea got away with few of their provisions.
59. Within a short time, the tactics of negotiations and scorched earth (combined with fairly significant losses at Tarata) resulted in widespread surrenders. By the end of October, an estimated 350 Whakatōhea had surrendered. Not all came in, however. Under leaders such as Hira Te Popo and Te Iki, an estimated 150 persons ultimately refused to surrender despite an initial intention to come in. Furthermore, several of the known Pai Mārire ringleaders still remained in the area and evaded capture. The second phase of strategy, therefore, in place by October 1865, proceeded with a somewhat reduced Crown force seeking out a reduced guerrilla force. The third phase, that came into being over 1866 and 1867, arose when Urewera began to ally with the fugitives to the point that the military settlement underway at Ōpōtiki was under threat. Forces in the area were built up again. From 1868, Te Kooti was in the area and all activity was directed towards his defeat and capture.

11. Crown Motivation for Confiscation

60. The commissioning direction included a question about the Crown's motivation for confiscation within the Inquiry District. The confiscation of the land of 'rebels' who fought against the Crown was a long standing policy since the first Taranaki War. Over the years, however, views changed and developed regarding the purpose or objectives of confiscation, the extent of lands being taken and the extent of land the Crown intended to return to rebels.
61. When the expeditionary force headed to Ōpōtiki, it was not a given that land there would be taken. The Weld government, during the 1865 parliamentary session beginning in July, had tried to draw a line under fighting rebellions and taking land. Instead, the expressed policy of that Ministry was that land would only be taken in the future to punish those who committed heinous crimes such as murder. Although the Peace Proclamation of September 1865 granted an amnesty to all former combatants of past rebellions, those who had committed murders of civilians were not included. The Crown declared its intention to come after these people. In this context, confiscation became a tool in the pursuit of criminals - a threat that if the people among whom the murderers resided did not give them up, within

certain timeframes, their land would be taken to provide compensation to those who had suffered loss or harm but also to provide funds to establish and support a police force to bring 'law' to the district. The Outlying Districts Police Act was passed to enable this. The Act came into law very much with the situation at Ōpōtiki in mind. An expedition was sailing to capture Völkner's murderers and if Whakatōhea did not hand the murderers over some of their land would be taken under this new Act.

62. As noted above, on the eve of the expeditionary force departing, a radical change occurred in how the area and its people were perceived. This also resulted in a change of motivation for the Crown taking land in this district. With the whole community being viewed as being belligerent Pai Mārire, who were not distinct from the murderers, land confiscation was no longer a threat to gain a result, but a planned part of punishment. The Pai Mārire community needed to be attacked, their lawlessness brought to an end and their land taken.
63. The theory that this change of motivation and intention came into effect on the immediate eve of the departure of the Ōpōtiki expeditionary force can not be proved by pointing to a specific piece of evidence or instructions. It can be shown, however, in the way officers such as Brassey and McDonnell referred in a matter-of-fact manner to the taking of land in the district as something that was imminent. In addition, by 28 September the Native Minister noted that land was to be taken to pay for the expeditionary force and that a military and then civilian settlement would be established in the district. By the time the Weld government's term ended in mid-October, it was not a question of whether land would be taken. By this time the motivations and role of land confiscation had returned back to those that were in vogue when the Settlements Act was in operation – punishment and military settlement.
64. The Weld Government, however, had eschewed the use of the New Zealand Settlements Act as a vehicle for the taking of Māori land. On the other hand, any intention to utilise the Outlying Districts Police Act, (with its processes of warnings and protections), had all been rendered moot by the all-out invasion that had taken place. Possibly this is why the Minister, on 28 September, was saying that the land would be taken on the "principle" of the Outlying Districts Police Act. Which provisions would still be utilised in the changed circumstances at Ōpōtiki remained unclear. Just over a month after the sailing of the Ōpōtiki expeditionary force, the Weld government was no more. When land in the Inquiry District was taken it was by a different government and under different legislation than that intended by the Weld

Ministry. Stafford's government was not hampered by a commitment to the Outlying Districts Police Act.

65. Land in the Inquiry District is then taken through the use of the 1863 Settlements Act which had mechanisms allowing speedy action in taking land. Despite the Outlying Districts Act being an awkward and possibly clumsy legislative vehicle it had some built-in protections.

- there were several steps of warning before land was taken
- before land was finally taken there needed to be an investigation as the Act made it illegal to take the land of innocent people
- the investigation was also needed as the degree of land taken from each person depended on the depth of their guilt in having been involved in the crime
- there was a limitation on how much land could be taken as the Act had prescribed that land would be taken only to provide compensation to victims or to fund the establishment of a police force.

66. By using the Settlements Act, all these protections were lost. Why then was this Act used? Available evidence indicates that the speedy and instant taking of land was needed as the acquisition of land in the Inquiry District (and in Whakatane too), had become part of a deal between the General Government and the Provincial Government where the former would transfer to the latter the administration of confiscated land in the Auckland Province. Initially, this long term objective had meant to be only about Waikato lands with the General Government keen to get rid of an onerous administrative task that had got bogged down. As part of his agreement to take over the administration of these lands, however, the Auckland Superintendent made as a condition the taking of land around Ōpōtiki and Whakatane. The boon that Auckland would receive was that these additional lands, combined with the confiscated lands of Tauranga, would provide the Provincial Government with new lands to solve the problem in Waikato of there not being enough lands suitable for settlement to fulfil the commitments already made to military settlers. Another advantage was that, on paper, as worked out by Whitaker, the sale of Ōpōtiki and Whakatane lands – after meeting all the commitments of survey and other costs; the compensation to Pākehā and loyal Māori; the creation of a place for surrendered rebels; and the allocation to military settlers – would actually turn a good profit for the Province. Furthermore, it was thought the newly settled land would address all the security problems being faced in these troublesome areas.