TE RAUPATU O TAURANGA MOANA

TE RAUPATU O TAURANGA MOANA

Report on the Tauranga Confiscation Claims

WAI 215

WAITANGI TRIBUNAL REPORT 2004

The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report
ISBN 1-86956-274-7
www.waitangi-tribunal.govt.nz
Typeset by the Waitangi Tribunal
Published 2004 by Legislation Direct, Wellington, New Zealand
Printed by SecuraCopy, Wellington, New Zealand
Set in Adobe Minion and Cronos multiple master typefaces

SIR JOHN TUREI

1919 – 2003

Haere rā e koroua,
Nōu te kāhui kura, ngā taonga whakamanamana.
Nōu te mōhiotanga, hei kaitakawaenga i ngā tikanga Māori, me ngā tikanga
katoa i te ao, i roto i te Rōpū Whakamana i te Tiriti o Waitangi.
Nōu anō hoki te rākau kōrero hei akiaki i te Kawana kia tika ai ā rātou mahi.
E te kaitohutohu i te reanga e piki mai ana, kua tākaia koe i te korowai o te rangimarie.
Moe mai e te rangatira, okioki atu ki te huihuinga o te kahurangi.
E kore koe te ngākau e warewaretia.

CONTENTS

Letter of transmittal xv

Chapter 1: Introduction

1.1 Introduction 1
1.2 The inquiry district 1
1.3 The history of the inquiry 3
1.4 The claims 9
1.5 Treaty principles 18
1.6 The report 26
1.7 Chapter summary 26

Chapter 2: Nga Tangata Whenua

2.1 Introduction 27
2.2 Ko Mauao te maunga, ko Tauranga te moana 27
2.3 The 'musket wars' 30
2.4 Hapu and their territories 34
2.5 Relationships between Tauranga hapu 43
2.6 Chapter summary 47

Chapter 3: Tauranga Maori and the Crown, 1840–64

3.1 Introduction 49
3.2 The arrival of Pakeha in Tauranga 50
3.3 Kawanatanga and rangatiratanga at Tauranga, 1840–64 52
3.4 Kawanatanga and kingitanga 63
3.5 Chapter summary 75

Chapter 4: The War in Tauranga

4.1 Introduction 77
4.2 Responsibility for native affairs 78
4.3 The military occupation of Te Papa 84
4.4 The battle of Pukehinahina, 29 April 1864 94
4.5 The battle of Te Ranga, 21 June 1864 99
4.6 Claimant and Crown submissions 101
4.7 Findings of fact 104
4.8 The law of rebellion in 1860s New Zealand 108
4.9 Treaty findings 116
4.10 Chapter summary 119

Chapter 5: Peace Negotiations

5.1 Introduction . . . 121
5.2 Negotiating a peace . . . 123
5.3 Claimant and Crown submissions . . . 144
5.4 Findings of fact . . . 146
5.5 Chapter summary . . . 148

Chapter 6: The Tauranga Raupatu

6.1 Introduction . . . 149
6.2 Towards confiscation . . . 149
6.3 Confiscation: the legal context . . . 153
6.4 Findings of fact on the law . . . 166
6.5 Claimant and Crown submissions . . . 169
6.6 Treaty findings . . . 171
6.7 Chapter summary . . . 175

Chapter 7: The Te Puna–Katikati Purchase

7.1 Introduction . . . 177
7.2 The initial Te Puna–Katikati transaction . . . 178
7.3 Additional claims to Te Puna–Katikati . . . 181
7.4 Te Puna–Katikati and the confiscation . . . 185
7.5 Settlement of the claims . . . 187
7.6 Claimant and Crown submissions . . . 192
7.7 Findings of fact . . . 195
7.8 Treaty findings . . . 197
7.9 Chapter summary . . . 201

Chapter 8: The CMS Blocks at Te Papa

8.1 Introduction . . . 203
8.2 The CMS purchases, 1838 and 1839 . . . 204
8.3 The Crown grant of Te Papa . . . 206
8.4 Claimant and Crown submissions on the Crown grant of Te Papa . . . 210
8.5 Treaty findings . . . 214
8.6 The Crown's acquisition of Te Papa, 1867 . . . 218
8.7 Claimant and Crown submissions on the Crown's acquisition of Te Papa . . . 221
8.8 Treaty findings . . . 222
8.9 Chapter summary . . . 223

Chapter 9: Raupatu Enforced

9.1 Introduction . . . 225
9.2 Pai Marire . . . 225
9.3 Location of the confiscated block . . . 230

Chapter 9: Raupatu Enforced—*continued*

9.4 Surveying the confiscated block . . . 233
9.5 The bush campaign . . . 244
9.6 The aftermath . . . 251
9.7 Claimant and Crown submissions . . . 252
9.8 Findings of fact . . . 256
9.9 Treaty findings . . . 260
9.10 Chapter summary . . . 262

Chapter 10: The 'Return' of Confiscated Land

10.1 Introduction. . . . 263
10.2 Background to the allocation of reserves and the return of land. . . . 265
10.3 Reserves allocated in the confiscated and Te Puna–Katikati blocks . . . 267
10.4 Claimant and Crown submissions on the allocation of reserves . . . 278
10.5 Findings of fact on the allocation of reserves . . . 281
10.6 The return of land in the remainder of the confiscation district . . . 284
10.7 Claimant and Crown submissions on the return of land . . . 294
10.8 Treaty findings . . . 298
10.9 Chapter summary . . . 307

Chapter 11: Alienation of Awarded Land

11.1 Introduction . . . 309
11.2 Alienation of reserves in the confiscated and Te Puna–Katikati blocks . . . 313
11.3 Crown purchases in the remainder of the confiscation district. . . . 323
11.4 Private purchasing in the remainder of the confiscation district . . . 336
11.5 Claimant and Crown submissions . . . 349
11.6 Treaty finding on Crown role in alienation of Maori land . . . 350
11.7 Impact of land loss on Tauranga Maori . . . 353
11.8 Treaty finding on sufficient endowment . . . 363
11.9 Chapter summary . . . 366

Chapter 12: Continuing Struggle, 1886–2003

12.1 Introduction. . . . 367
12.2 Post-raupatu protests to 1927 . . . 367
12.3 The Sim commission, 1927 . . . 369
12.4 Aftermath of the Sim commission . . . 376
12.5 The quest for a Tauranga Moana raupatu settlement, 1960–81 . . . 380
12.6 The Tauranga Moana Maori Trust Board Act 1981 . . . 389
12.7 The failure of the 1981 arrangements. . . . 390
12.8 Claimant and Crown submissions . . . 393
12.9 Treaty findings . . . 395
12.10 Chapter summary . . . 396

Chapter 13: Recommendations

13.1 Introduction . . . 399
13.2 Summary of findings . . . 399
13.3 Prejudice . . . 401
13.4 Recommendations . . . 406
13.5 Chapter summary . . . 410

Chapter 14: Minority Opinion

14.1 The Tribunal findings with which I agree . . . 413
14.2 Finding . . . 414
14.3 The findings with which I do not agree . . . 414

Appendix i: Record of Inquiry

Record of hearings . . . 419
Record of proceedings . . . 421
Record of documents . . . 459

Appendix ii: Rice's List of Surrendered Tauranga Maori

List of surrendered Tauranga Maori . . . 493

Appendix iii: Reserves Awarded to Individuals in Te Puna–Katikati

Tables of reserves in the Te Puna–Katikati blocks . . . 501

Appendix iv: Alienation Tables

Tables of reserves and alienations . . . 503

TABLE OF MAPS

Map 1: Tauranga Moana district inquiry boundaries 2
Map 2: Tauranga land blocks 4
Map 3: Hearing locations 9
Map 4: Battle sites, 1820–40 32
Map 5: Approximate location of some hapu interests – east harbour 37
Map 6: Approximate location of some hapu interests – confiscated block 39
Map 7: Approximate location of some hapu interests – west harbour 41
Map 8: The Waikato war 72
Map 9: Proposed roads, military settlements, and Maori distribution, North Island, 1863 . . . 82
Map 10: Tauranga, 1864 88
Map 11: Route of Te Tai Rawhiti forces 90
Map 12: Confiscation district boundaries 165
Map 13: Te Puna–Katikati purchase boundaries 176
Map 14: Tauranga military settlements 185
Map 15: CMS Crown grant boundaries 208
Map 16: Confiscated block boundaries 237
Map 17: Bush campaign 247
Map 18: Parish of Te Papa reserves 268
Map 19: Te Puna reserves 270
Map 20: Te Puna–Katikati reserves 272
Map 21: Progress of title investigation 283
Map 22: East harbour blocks 286
Map 23: Omokoroa reserves 319
Map 24: Alienation of Maori land – remainder of confiscation district 325
Map 25: Mauao blocks 329
Map 26: Matakana transactions 340
Map 27: Relief map of Maori land, 1886 357
Map 28: Vegetation coverage of Maori land, 1886 358

TABLE OF FIGURES

Fig 1: Horatio Robley, *Tomika Te Mutu, 1866* 68
Fig 2: Hamiora Tu 69
Fig 3: Tauranga, showing Monmouth and Durham redoubts, circa 1864 86
Fig 4: Horatio Robley, *Taratoa, Lay Preacher* 91
Fig 5: Horatio Robley, *Earthworks and Fence of the Gate Pa, 1864* 95
Fig 6: Gate Pa, Pukehinahina Ridge, circa 1864 96
Fig 7: Nicholas Chevalier, *Storming the Rifle Pits at Te Ranga, 1864* 98
Fig 8: Horatio Robley, *Surrender of the Ngaiterangi, 1864* 132
Fig 9: Horatio Robley, *Raniera Te Hiahia, 1864* 179
Fig 10: Cemetery, Te Papa 211
Fig 11: Officers' mess, Te Papa, circa 1867 245

ABBREVIATIONS

AJHR	*Appendix to the Journal of the House of Representatives*
APL	Auckland Public Library
app	appendix
ArchNZ	National Archives of New Zealand
ATL	Alexander Turnbull Library
BPP	*British Parliamentary Papers : Colonies New Zealand* (17 vols, Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
ch	chapter
CMS	Church Missionary Society
comp	compiler
DNZB	*The Dictionary of New Zealand Biography* (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOSLI	Department of Survey and Land Information
ed	edition, editor
encl	enclosure
fn	footnote
ha	hectare
IA	Internal Affairs file
JHR	*Journal of the House of Representatives*
JPS	*Journal of the Polynesian Society*
Le	Maori–English lexicon file
ltd	limited
MA	Maori Affairs file series
MS	manuscript
NZJH	*New Zealand Journal of History*
NZLJ	*New Zealand Law Journal*
NZLR	*New Zealand Law Reports*
NZPD	*New Zealand Parliamentary Debates*
OLC	old land claim
p, pp	page, pages
para	paragraph
PC	Privy Council
pt	part
RDB	*Raupatu Document Bank* (139 vols, Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections (of an Act)
sec	section (of this report, a book, etc)
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers

Unless otherwise stated, footnote references to claims, papers, and documents are to the record of inquiry, which is in appendix I.

ACKNOWLEDGEMENTS

The Tribunal wishes to thank Max Oulton of the University of Waikato for providing much of the material used to produce the maps in this report. We also wish to acknowledge the contributions of the following Waitangi Tribunal staff for assistance in completing this report: Rhonda Pouhatu and Pam Wiki (claims administration); Heather Bassett, Marinus La Rooij, Roimata Minhinnick, and Rachael Willan (research and facilitation); Stephen Hamilton, Ewan Morris, Kate Riddell, and Tom White (report writing); Noel Harris (mapping); and Dominic Hurley (editorial).

The Honourable Parekura Horomia
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

The Waitangi Tribunal
110 Featherston Street
WELLINGTON

11 August 2004

Te Minita Māori

Tēnā koe e te rangatira e noho mai nā i runga i tēnā taumata whakahirahira, e whakatutuki nei i ngā kaupapa me ngā moemoea a te iwi Māori. Tēnā hoki koe e whai ake ana i ngā tapuwae o te hunga rongonui i mua atu i a koe. Ara hoki ko Ta Te Rangihiroa, Ta Maui Pomare, Ta Timi Kara, te matua i a Ta Apirana Ngata me ngā mea o muri ake nei i a Matiu Rata, a Koro Wetere me etahi atu.

He mihi he tangi ano hoki ki te hunga kua mene atu ki te po otirā kua huri atu ki tua o te arai. Haere atu rā, haere atu rā, e moe i te moenga roa. Kati kā hoki mai ki a tātou o te ao tangata e takoto nei i roto i te ao hurihuri – tēnā tātou katoa.

I te timatanga i tipu ake te purongo nei i ngā tono a ngā uri o ngā hapū o te rohe mai ngā Kuri a Whārei ki Wairākei. No muri tata mai i whakatakotoria ano hoki etahi atu iwi o ratou ake tono i mua i te aroaro o te Taraipiunara.

Enclosed is our report Te Raupatu o Tauranga Moana. It covers raupatu claims to the Waitangi Tribunal in the Tauranga Moana district of the western Bay of Plenty. The claims covered in the report have been filed with the Tribunal on behalf of the various hapu of Ngati Ranginui, Ngai Te Rangi, Ngati Pukenga (or Tawera), Waitaha, and Marutuahu. The report covers only the period up until 1886, when the confiscation of the district and return of some of the land to Tauranga Maori was complete. A further report on post-1886 events may follow. This two-stage approach has been undertaken to assist the Crown and claimants move toward a negotiated settlement of the Tauranga claims.

In 1864, forces of the Crown attacked Tauranga Maori at Pukehinahina and Te Ranga. Following protracted peace negotiations, the Crown confiscated the Tauranga district under the New Zealand Settlements Act 1863. All the allegations of Treaty breach reported here stem from these initial acts of the Crown. We find that the Crown's military operations against Tauranga Maori and the confiscation of any of their land was in breach of several principles of the Treaty of Waitangi.

The Crown has long maintained that, following the raupatu, Tauranga Maori were relatively well treated and suffered little or no prejudice as a result. In the Tauranga Moana inquiry, the Crown accepted that the confiscation of some 42,000 acres at Tauranga

breached the Treaty. However, the Crown argued that, because the remainder of the district was returned, the extent of Treaty breach that adversely affected Tauranga Maori was relatively limited. We therefore devote much of our report to analysing post-raupatu events at Tauranga. This is done to enable an evaluation of the extent of Crown Treaty breach and resulting prejudice arising from the Tauranga raupatu. The events covered in this report include: the Tauranga 'bush campaign' of 1867, the Te Puna–Katikati Crown 'purchase', the Crown acquisition of the Te Papa blocks, the return and subsequent alienation of much of the Tauranga district before 1886, and Crown responses to the attempts of Tauranga Maori to gain some redress for their raupatu grievances. In all these events, we find that the Crown breached the Treaty in significant ways.

A summary of our findings of Treaty breach is included in the final chapter, followed by a discussion of the prejudice to Tauranga Maori. It is the firm conclusion of this Tribunal that, both the nature of Crown Treaty breach and the prejudice affecting Tauranga Maori in the period 1864 to 1886 are comparable with that suffered by the Taranaki, Waikato, and eastern Bay of Plenty iwi as a result of raupatu in their districts. We therefore recommend that the Crown move quickly to settle the Tauranga claims with the various claimants. In our opinion, generous remedy will be necessary to accomplish this.

Finally, we note that one of our members, the Honourable Dr Michael Bassett, has dissented on what he describes as 'a number of points in the main report' but he adds that his 'conclusions do not warrant any lessening of the quantum of settlement made with Tauranga Maori.' His minority opinion follows that of the majority.

Heoi ano

CHAPTER 1

INTRODUCTION

1.1 Introduction

This report concerns raupatu claims to the Waitangi Tribunal that cover some 290,000 acres of land around Tauranga Moana in the western Bay of Plenty. 'Raupatu' is the term given to the confiscation by the Crown of areas of Maori land during the New Zealand wars of the 1860s. In this chapter, we begin by describing the inquiry district before proceeding to summarise the history of our inquiry and the claims included within it. We end the chapter with a discussion of the Treaty of Waitangi and the Treaty principles that we consider relevant to this inquiry.

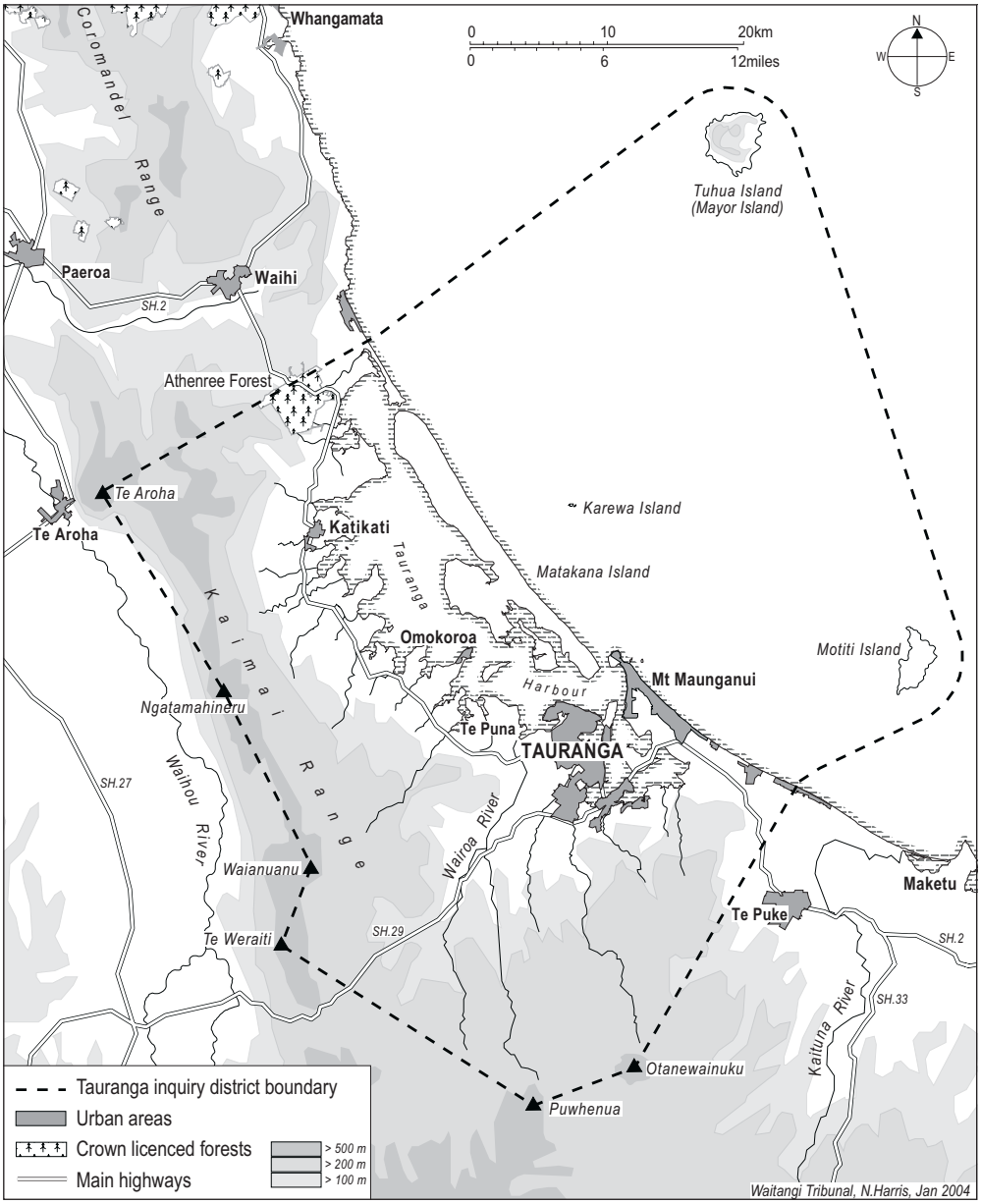
1.2 The Inquiry District

The Tauranga Moana inquiry district follows the boundary defined by the Tauranga District Lands Act 1868. From Nga Kuri a Wharei, on the coast at the north-west tip of the district, this boundary runs to the summit of Mount Te Aroha and then along the watershed of the Kaimai Range to Otanewainuku in the south, and back in a straight line to meet the coast again at Wairakei, near the present-day Papamoa Beach settlement. The inquiry district also includes two groups of islands: the 'inshore islands', within or bordering Tauranga Moana, the largest of which are Matakana and Rangiwaea; and the 'off-shore islands', which include Tuhua (Mayor Island), Motiti, and Karewa. Within the boundaries of the inquiry district are the modern-day urban areas of Tauranga and Mount Maunganui, and several smaller outlying urban centres from Papamoa in the east to Katikati in the west.

In September 1999, counsel for Waitaha applied to have the boundaries of the inquiry district extended to the east as far as the Waiari River, so as to include all of the Waitaha rohe.[1] The application was heard on 14 December 1999, and the Tribunal issued its ruling on 20 March 2000.[2] In it, the presiding officer stated that it was unfortunate that the raupatu boundary lines fixed by the Tauranga District Lands Act cut through the rohe of several hapu, including Waitaha. However, he declined to alter the boundaries of the inquiry district on the

1. Paper 2.227
2. Paper 2.240

1.2



Map 1: Tauranga Moana district inquiry boundaries

ground that the raupatu boundary lines provided the best limits for what is, after all, the main issue of this inquiry: the Tauranga raupatu.[3]

The Tauranga Moana lands were originally proclaimed as a district under the New Zealand Settlements Act on 18 May 1865, and that district was later extended to the south-east by the Tauranga District Lands Act 1868. The claimants alleged that the whole of this district of some 290,000 acres was confiscated. In this report, we refer to this area as the 'confiscation

3. Paper 2.256

district', which has been the term used to describe it since 1865. Within the confiscation district there are four different categories of land:

- the 'confiscated block', which comprises 50,000 acres of land centred on the Te Papa Peninsula and retained by the Crown as confiscated land;
- the two 'CMS blocks', which total approximately 1300 acres of land on the Te Papa Peninsula that were, originally purchased by the Church Missionary Society in 1838 and 1839 but are located within the confiscated block;
- the 'Te Puna–Katikati blocks', which cover some 93,000 acres of land that were 'purchased' by the Crown between the Te Puna Stream and the western edge of the inquiry district; and
- the 'remainder lands', which comprise the remainder of the confiscation district, including the islands, that was returned to some of its customary owners.

1.3 The History of the Inquiry

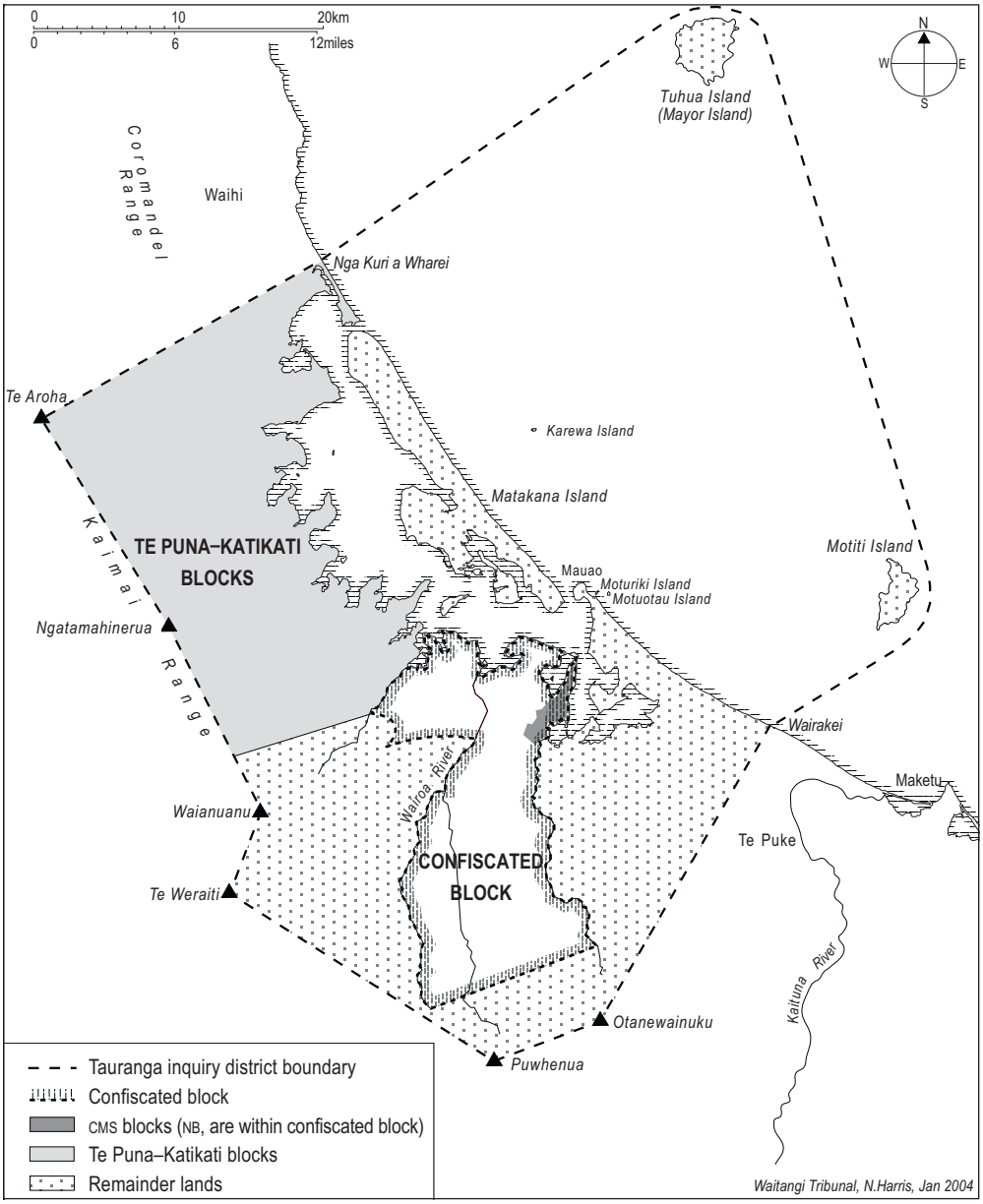
At Owae Marae at Waitara in June 1990, the chairperson of the Tribunal announced that inquiries into the raupatu claims would begin as soon as was practicable and would start with Taranaki and follow the sequence of the wars of the 1860s through the Waikato to the Bay of Plenty and the East Coast. For various reasons, notably the decision of Waikato–Tainui to forgo a Tribunal inquiry and settle directly with the Crown, this schedule was not strictly followed, but the Tribunal has now reported on the Taranaki and Ngati Awa confiscations. Throughout our report, we draw on and refer to these earlier reports – as well as to the Waikato–Tainui settlement – where relevant. Next, we outline the history of our own inquiry, which commenced with preliminary moves to inquire into Tauranga raupatu claims in 1990.

1.3.1 Background to this inquiry

Our inquiry is not the first to investigate the circumstances of the Tauranga raupatu. We briefly describe these earlier inquiries here, and examine them in detail in chapter 12. Chief among those earlier inquiries was the one carried out by the Royal Commission on Confiscated Lands and Other Grievances, otherwise known as the Sim commission, in 1927. That commission was required to report on all of the main confiscations, including Tauranga, and on various petitions relating to the confiscations and other land issues, including three that related to the Tauranga raupatu.

The Sim commission's terms of reference were limited. Amongst other things, it could not examine the validity of the confiscation, and the commissioners were instructed to disregard the petitions of Maori who had 'denied the sovereignty of Her then Majesty' but claimed 'the

1.3.1



Map 2: Tauranga land blocks

benefit of the provisions of the Treaty of Waitangi'.[4] Nevertheless, after examining the wars of the 1860s and the resulting confiscations, the commission concluded that the Government's invasion of Waitara, which started the Taranaki war, was wrong and that Taranaki Maori 'ought not to have been punished by the confiscation of any of their lands'.[5] However, the

4. 'Report of Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Maoris', 29 June 1927, AJHR, 1928, G-7, p 2 (RDB, vol 48, p 18,525)

5. Ibid, pp 10–11 (pp 18,533–18,534)

commission was not so generous in its interpretation of the Waikato war. Because it believed that there was a Kingitanga plot to attack Auckland, it accepted that some confiscation in the Waikato was justified, although not as much as was carried out.

On the issue of Tauranga, the commission concluded that, by fighting in Waikato, Tauranga Maori had been 'engaged in rebellion against Her Majesty's authority'. It concluded that the confiscation was 'justified and . . . not excessive' and that the return of three-quarters of the land confiscated at Tauranga had provided 'substantial justice' to Tauranga Maori.[6]

Ngati Ranginui, an iwi of the central Tauranga district, conducted a long-running campaign for the recognition of their raupatu claim. They eventually gathered support from two other iwi, Ngai Te Rangi and Ngati Pukenga, and the Government 'settled' their claim in 1981. This arrangement was embodied in the Tauranga Moana Maori Trust Board Act 1981, which set up a board to administer a sum of $250,000 compensation, said in section 6(4) of the Act to be 'accepted in full and final settlement of all claims of whatever nature arising from or out of any confiscation or acquisition by the Crown of any of the land described in the Schedule to this Act'. The land described in the schedule was the same confiscated land described in the schedule to the Tauranga District Lands Act 1868 (see map 1).

The phrase 'full and final settlement' had been used in previous raupatu settlements with other iwi. Following the enactment of the Tauranga Moana Maori Trust Board Act, it seemed that Tauranga Maori had finally had such a settlement themselves. However, by 1981, none of the other raupatu tribes were satisfied with their settlements, mainly because rampant inflation had eroded the value of the annual compensation payments, and they all took the opportunity to lodge claims with the Waitangi Tribunal after 1985, as did Tauranga Maori.[7] This was no real surprise, since the Sim commission's terms of reference did not allow it to inquire into the raupatu in light of the Treaty. Nor did the Tauranga Moana Maori Trust Board Act 1981 refer to the Treaty. Despite the fact that the settlements were said to be 'full and final', the Waitangi Tribunal is required under the Treaty of Waitangi Act 1975 to examine such claims in light of the principles of the Treaty.

1.3.2 The Tauranga Moana Tribunal

In December 1990, the chairperson of the Tribunal wrote to the Tauranga raupatu claimants and informed them that the Tribunal wished to hear all their claims together.[8] At that time, 12 claims had been lodged with the Tribunal concerning the Tauranga Moana district. A Tribunal member, the late Sir Monita Delamere, met with the claimants and recommended that the claims be heard together. On 24 June 1991, the chairperson announced that all Tauranga

6. Ibid, pp 17–20 (pp 18,540–18,543)

7. In 1985, Parliament amended the Treaty of Waitangi Act 1975 to grant the Waitangi Tribunal retrospective jurisdiction to 1840.

8. Paper 2.11

claims would be heard in one inquiry. Judge Heta Hingston was appointed presiding officer for the inquiry and Sir Monita was appointed a member at the same time.[9] Although this inquiry was envisaged as one that would focus on raupatu claims, several claims relating to non-raupatu issues were lodged soon after the decision was made to proceed to a hearing, and these were also included in the inquiry. Judge Hingston chaired several judicial conferences with the claimants and initiated the commissioning of the research necessary to begin hearing the claims. But, owing to several other large inquiries being in hearing during the mid-1990s, hearings on the Tauranga claims did not begin until 1998.

In August 1997, a new Tribunal was constituted to hear the Tauranga claims. The appointed members were Judge Richard Kearney (presiding), the Honourable Dr Michael Bassett, John Clarke, Areta Koopu, and Professor Keith Sorrenson.[10] Sir John Turei provided assistance to the Tribunal as a kaumatua adviser until his death in early 2003.

The Tauranga Moana inquiry was held under the Tribunal's now standard practice of grouping claims within a district into one research and hearing programme. As the Tribunal's *Business Strategy 1999* put it:

> In broad terms, the Waitangi Tribunal's strategy is to group overlapping historical and contemporary claims for research and hearing on a district basis. Having regard to the common history, geography, land blocks, tribal groupings, and number and extent of claims, the Tribunal finalises a district and prepares a research casebook. Research for the casebook is carried out by the claimants, the Tribunal, and the Crown Forestry Rental Trust.[11]

This 'casebook method' of inquiry required a Tribunal member to certify that the research reports included in the casebook addressed the principal issues relating to the inquiry and were of sufficient quality for the hearings to proceed. On 3 July 1997, Professor Sorrenson certified approval of the Tauranga casebook.

1.3.3 The hearings

The first Tauranga Moana Tribunal hearing was held at Huria (Judea) Marae from 23 to 27 February 1998. At this hearing, the Tribunal heard tangata whenua evidence from representatives of the Tauranga claimant groups and expert evidence from three professional researchers: Professor (now Dame) Evelyn Stokes, Vincent O'Malley, and Dr Hazel Riseborough. Over the next 3½ years, 12 hearings were held at marae around Tauranga and at Te Puke and Paeroa to hear evidence from the claimants. The dates and venues of these

9. Paper 2.14
10. Paper 2.110
11. Waitangi Tribunal Business Unit, *Waitangi Tribunal Business Strategy 1999* (Wellington: Waitangi Tribunal Business Unit, 1999), p 10

hearings are listed in appendix 1 of this report. At these hearings, the Tribunal heard evidence that related both to the claims of local hapu and to district-wide issues.

At several points during the hearing process, it became necessary for the Tribunal to alter the way in which the inquiry was being conducted. These changes were made with a view to assisting the parties to prepare for the hearings in an expeditious and efficient manner. By November 1998, the Tribunal had become concerned with the possibility that evidence would be repeated several times during hearings and that an overly long timeframe would be necessary for all the evidence to be heard. These issues were discussed at a judicial conference, and the Tribunal issued a direction proposing to separate out all the harbour-related evidence and hear it at a 'generic' hearing.[12] On 8 August 2000, the presiding officer also directed that claims lodged after 10 November 2000 would not be heard as part of the Tauranga Moana inquiry.[13]

Soon afterwards, a further change in the hearing schedule was announced. On 17 August, the Tribunal issued a direction that it would proceed to hear and report on the Tauranga claims in two stages. The first stage of the inquiry would report on issues related to the raupatu, which included:

- the Crown's intervention in Tauranga Moana;
- the battles of Pukehinahina and Te Ranga;
- the pacification hui;
- the Katikati–Te Puna purchase;
- the 'bush campaign'; and
- the return of land by the commissioners of Tauranga land.

The direction added that the Tribunal's initial report would also cover the following issues, even though they did not necessarily have a direct relationship to the raupatu:

- the 'CMS purchase';
- the events leading up to the signing of the Treaty of Waitangi; and
- relations between the Crown and Maori in Tauranga from 1840 to 1864.

The direction also stated that the Tribunal hoped to hear all outstanding claimant evidence relating to the raupatu in three more weeks of hearings, the last of which would be in December 2000. It then invited the Crown to present its raupatu evidence in February and April 2001. Once these hearings were completed, the Tribunal hoped to present a report on the confiscation and other issues before proceeding to a second stage of hearings and a report on twentieth-century claims.[14] The present report covers the issues examined in stage 1 of the inquiry.

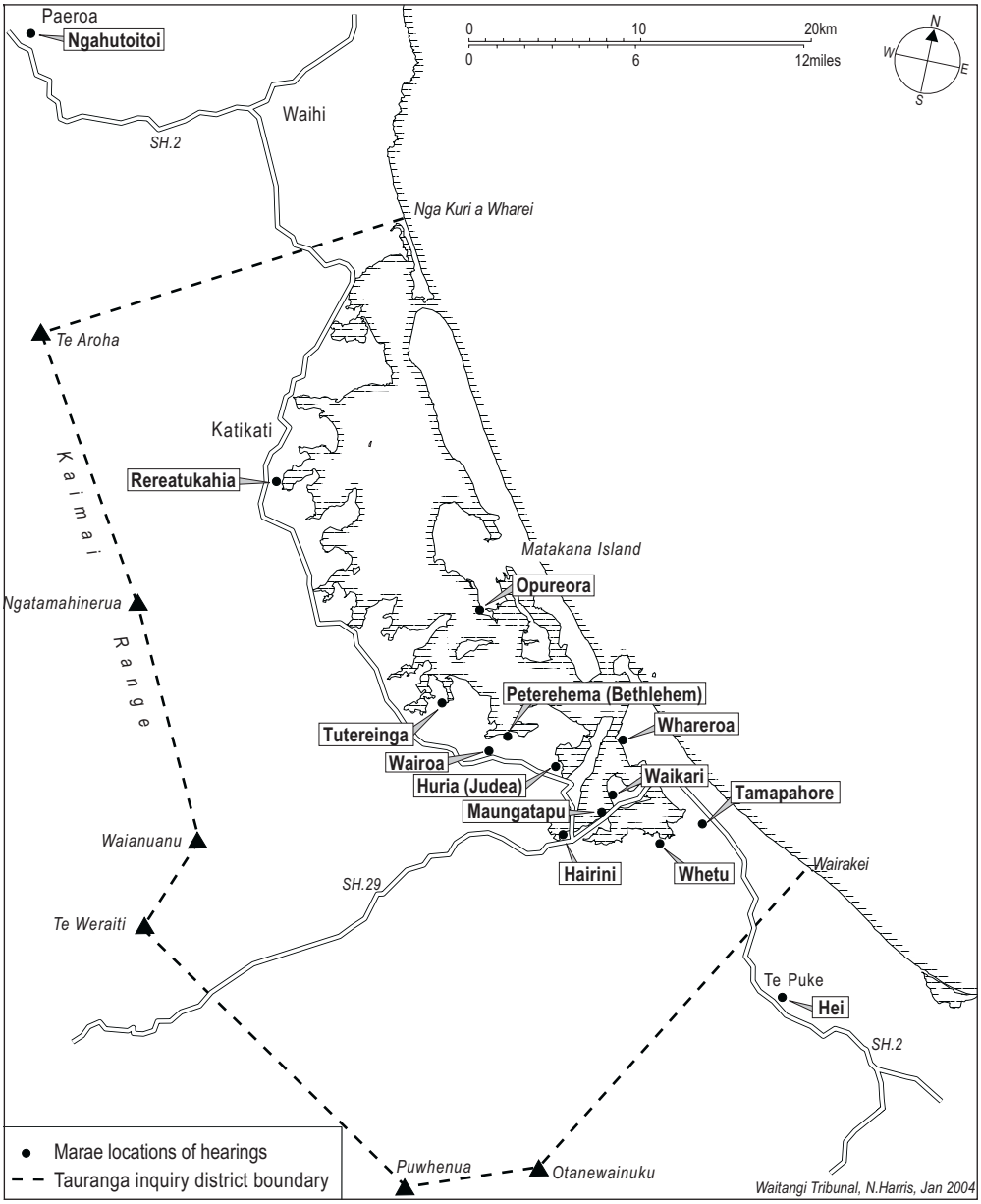
12. Paper 2.198
13. Paper 2.286
14. Paper 2.288

The parties to the inquiry agreed to the changes in the way in which it was to be conducted.[15] However, there was some concern from claimant counsel and the Crown over the short timeframe for completing it.[16] Some claimant counsel requested that the Crown concede that the confiscation was in breach of the Treaty and thus speed up the inquiry process even more.[17] After further consultation with counsel, the presiding officer issued another direction on 3 October 2000. This reiterated the Tribunal's intention to proceed to hear and report on the raupatu as the first stage of the inquiry. The definition of 'raupatu issues' was slightly expanded to enable the Tribunal to report on the 1927 Sim commission and the Tauranga Maori Trust Board Act 1981 in stage 1 of the inquiry. The direction added that, if the Crown were to concede breaches of Treaty principles over the Tauranga confiscation, as claimant counsel had requested, this would significantly reduce the amount of time necessary to complete the inquiry.[18] The Crown did not reply at that point, but it did issue a statement of response on 20 September 2001. We discuss this below. Eventually, the Tribunal agreed on a new timetable to allow the claimants and the Crown more time to present their evidence.

Following the direction finalising the two-stage inquiry, four more hearings were held to hear claimant evidence. After these, the Crown presented its evidence at Tauranga House, Tauranga Historical Village, from 15 to 18 October 2001. Closing submissions on behalf of the claimants were presented to the Tribunal at Tutereinga Marae, Te Puna, from 3 to 6 December 2001. Crown closing submissions were made at Tauranga House on 31 January 2002. Claimant responses to the Crown's closing submissions were made in writing and were received by the Tribunal between 7 and 26 March 2002.[19]

In the statement of response, filed on 20 September 2001, the Crown acknowledged that, in light of the Waikato Raupatu Claims Settlement Act 1995, 'perceiving some or all of the tribe Ngaiterangi' as rebels was 'unfair' and that the 'confiscation of approximately 42,000 acres as punishment for this perceived rebellion was wrongful'.[20] Beyond these acknowledgements, the Crown largely denied all the alleged Treaty breaches advanced by the claimants in their statements of claim. In its closing submissions, the Crown acknowledged that it had breached the Treaty by taking land at Tauranga. However, counsel for the Crown stated that it considered this acknowledgement to be of limited assistance to the Tribunal, because it did not concede that Tauranga Maori had suffered any prejudice as a result of Crown actions. Crown counsel expressed the view that the Tribunal should fully inquire into and report on claims, regardless of any perceived Crown concessions.[21] It was therefore necessary for the Tribunal to report in full on all the claimants' major allegations of Treaty breach.

15. Paper 2.289
16. Ibid
17. Papers 2.292–2.298, 2.302–2.304
18. Paper 2.299
19. Documents p2, p3–p8, p11–p13
20. Paper 2.363, para 26
21. Document 02, pp 4–5



Map 3: Hearing locations

1.4 The Claims

1.4.1 Introduction

The decision to hear only claims related to the raupatu in the first stage of our inquiry means that it is important to state clearly which claims are being reported on here. In general terms, this report is on the raupatu elements of all claims within the inquiry district that were received before 1 November 2000. This includes aspects of claims that at first glance may not appear to be directly related to confiscation, such as the alienation of returned land prior to 1886. However, for reasons that will become apparent, we believe that the processes of

confiscation, the return of land, and land alienation are intimately connected and need to be reported on together.

Over 60 claims have been lodged with the Tribunal relating to land and other resources within the Tauranga Moana inquiry district. Most of them have been made on behalf of Tauranga-based hapu and have a raupatu element. We summarise the claims by grouping them under the names of the main tribal groupings in Tauranga Moana.

1.4.2 Ngati Ranginui

The hapu of Ngati Ranginui, traditionally located west of the Waimapu River as far as Katikati, have a long history of protest against the alleged injustice of raupatu. This is reflected in the emphasis of their claims to this Tribunal. The first Tauranga claim made to the Tribunal (Wai 42(a)) was received from one of these hapu. The claimant hapu are listed below.

(1) Wairoa hapu (Wai 42(a))

Wai 42(a) is a claim by Rameka Apaapa and others on behalf of three closely related hapu that reside along the Wairoa River: Ngati Kahu, Ngati Pango, and Ngati Rangi. The claims concern the waging of war at Tauranga by the Crown, the loss of land through raupatu, the Te Puna–Katikati purchase, the bush campaign, the process for returning land, the alienation of hapu land, and the ownership and management of the Wairoa River. The Wairoa hapu presented evidence to the Tribunal at Wairoa Marae in the week starting 9 November 1998.[22]

(2) Pirirakau (Wai 227)

Wai 227 was lodged by the late Tipi Faulkner on behalf of the Pirirakau hapu. It focuses on the war, pacification, and confiscation at Tauranga; the Te Puna–Katikati purchase; the survey of the confiscated block and the accompanying bush campaign; the process by which land was returned and alienated; ongoing Pirirakau protest; the 1927 Sim commission; and the Tauranga Moana Maori Trust Board Act 1981. Pirirakau presented evidence to the Tribunal at Tutereinga Marae in the week starting 18 May 1998.[23] The raupatu aspects of two other claims connected to Pirirakau (Wai 707 and Wai 727) are also covered in this report. Evidence relating to these claims was heard at Te Rereatukahia Marae in the week beginning 5 March 2001.[24]

(3) Ngati Ruahine (Wai 362)

Wai 362 was lodged by Lance Waaka on behalf of 'Ngati Ruahine of Ngati Ranginui'. The Tribunal did not hear specific evidence relating to the Ngati Ruahine claim, but counsel

22. Claim 1.1(a); docs C4, N14
23. Claims 1.9, 1.9(a); docs B5, N9
24. Claims 1.42, 1.47; docs K28, K29, K31

presented closing submissions on their behalf. According to those submissions, Ngati Ruahine's rohe is wholly within the 50,000-acre confiscated block. They have close ties to Ngai Te Ahi and Ngai Tamarawaho. Issues emphasised in this claim include the nature of the Crown intervention in Tauranga in the 1860s and the alleged landlessness of Ngati Ruahine after the return of confiscated land.[25]

(4) Ngai Te Ahi (Wai 370)

Wai 370 was lodged by Taumatangi Keno, who died during the course of our inquiry, and Tane Heke-Kaiawha on behalf of Ngai Te Ahi. It is primarily concerned with the war, the surrender process, the raupatu, and alienations of Ngai Te Ahi land in the nineteenth century. Ngai Te Ahi gave evidence to the Tribunal at Hairini Marae in the week starting 27 March 2000.[26]

(5) Ngati Hangarau (Wai 503, Wai 672)

Wai 503 and Wai 672 were lodged by the late Michael O'Brien and others on behalf of Ngati Hangarau. They relate principally to the war, the raupatu, the quality of the land that was returned, and twentieth-century attempts to gain redress for Ngati Hangarau grievances. Ngati Hangarau presented evidence to the Tribunal at Peterehema (Bethlehem) Marae in the week beginning 17 May 1999.[27]

(6) Ngati Tapu (Wai 546)

Wai 546 was lodged by Tureiti Stockman on behalf of Ngati Tapu. This hapu has often been thought of as a part of Ngai Te Rangi, but in this inquiry its links to Ngati Ranginui, Nga Marama, and Waitaha were emphasised. Historically important hapu names, including Te Materawaho and Ngati Kahurere, have been subsumed into the name Ngati Tapu. The claim gives particular attention to the CMS purchase, the war, raupatu, the return of land, and the individualisation of tenure. Evidence in support of the Ngati Tapu claim was presented at Waikari Marae in the week beginning 29 May 2000.[28]

(7) Ngai Tamarawaho (Wai 659)

Wai 659 was lodged by Desmond Tata, Peri Kohu, and Piripi Winiata on behalf of Ngai Tamarawaho. Issues emphasised in this claim are the CMS purchase, the war, the surrender of Tauranga Maori, the relationship between Ngati Ranginui and Ngai Te Rangi, the return of land, the alienation of tribal land, the economic and cultural loss experienced by the hapu, and the alleged failure of the Crown to provide adequate redress for twentieth-century

25. Claims 1.17, 1.17(a), 1.17(b); doc N5
26. Claims 1.29, 1.29(a); docs G19, N17
27. Claims 1.23, 1.23(a), 1.38, 1.38(a); docs D27, N15
28. Claims 1.26, 1.26(a)–(c); docs H18, N3

claims. Ngai Tamarawaho presented evidence in support of their claim at Huria Marae in the week starting 7 February 2000.[29]

(8) Other Ngati Ranginui claims

The raupatu aspects of the following claims which appear to be made by members of hapu of Ngati Ranginui are also reported on:

- Wai 42(b): lodged by Jacqueline Sayers and concerning the actions of the Crown in confiscating Ngati Ranginui tribal land.
- Wai 42(d): lodged by Alex Tata and others on behalf of Ngai Tamarawaho and relating to the confiscation of lot 45, section 1, town of Tauranga.
- Wai 47: lodged by the late William Ohia and others and concerning lands of 'Ngaterangi, Ngati Ranginui, Ngati Pukenga and related peoples'.
- Wai 360: lodged by Lance Waaka on behalf of the 'descendants of Anaru Haua' and concerning land at Judea.
- Wai 580: lodged by Toa Faulkner and others and concerning Otamaha lands.
- Wai 611: lodged by Christopher Tangitu and concerning Mauao and nearby islands, Pukewhanake, and the bed of Tauranga Harbour.
- Wai 853: lodged by Peri Kohu and others on behalf of 'the Original inhabitants of Tauranga' and concerning the Tauranga Lands Act 1867.[30]

We did not receive submissions on behalf of the above listed claimants and little or no specific evidence was presented in support of their claims. However, we have examined the claims and are satisfied that they are covered in general terms by this report. This has been possible because the large amount of generic evidence presented to this Tribunal covers the issues raised in them.[31] As we note below, several other claims are in a similar position.

1.4.3 Ngati Pukenga (Wai 637)

Ngati Pukenga (also sometimes known as Te Tawera) are an iwi whose primary claim before the Tauranga Moana Tribunal was filed by Shane Ashby and was designated Wai 637. Issues covered in Ngati Pukenga's claim include the war, surrender, and raupatu at Tauranga; the Te Puna–Katikati purchase; and the return of land. Evidence in support of Wai 637 was heard on 11 and 12 October 2001 at Te Whetu o Te Rangi Marae.[32]

29. Claims 1.35, 1.35(a); docs F30, N23

30. Claims 1.1(b), 1.1(d), 1.2, 1.16, 1.27, 1.30. Other claims that appear to be connected to Ngati Ranginui may be reported on after the stage 2 Tauranga inquiry. They include: Wai 86, lodged by Anaru Kohu and others and concerning the Waikareao Estuary expressway; Wai 162, lodged by the late Wiremu Ohia and Buddy Mikaere and concerning the Kopukairoa Telecom site; Wai 208, lodged by Raymond Dillon on behalf of the trustees of Ngati Kahu Trust and concerning the Bethlehem School site; Wai 336, lodged by Des Kahotea and concerning 'ancestral land' and the Energy Companies Act 1992; Wai 708, lodged by Hoki Leef-Bruce, Cherri Ake, and Luke Ake on behalf of 'the Whanau of Hirini' and concerning Tauranga Harbour. See claims 1.4, 1.5, 1.12, 1.43.

31. See especially docs A2, A7, A8, A13, A18, A22, A23, A29, A38, A39, A40, A57, B2, F14, I12, J1, K3, L1, M9, M11, P15

32. Claims 1.32, 1.32(a); docs M33, N21

Another claim lodged on behalf of Ngati Pukenga and covered in this report in so far as it concerns the raupatu is Wai 751 by Te Awanuiarangi Black, which relates to the 'physical, social, economic and cultural disenfranchisement suffered' by the iwi.[33]

1.4.4 Waitaha (Wai 664)

Waitaha are a hapu of Te Arawa who have customary interests in the east of the Tauranga Moana inquiry district and strong ancestral links to Ngati Ranginui and Ngati Pukenga. The Waitaha claim, lodged by Thomas McCausland and others, raises issues that include the war, the role of the Waitaha leader Hakaraia in the fighting at Tauranga, the extension of the confiscation district's boundary by the Tauranga District Lands Act 1868, the return of land, and the Crown purchase of some Waitaha land. Waitaha's evidence was presented at the hearing held in the week beginning 2 April 2001 at Hei Marae, Te Puke.[34]

Another claim covered in this report concerning Waitaha interests in Tauranga Moana is Wai 702, which was brought by Taane Karaka and others of the 'Waitaha Committee' and concerns the loss of tribal land.[35]

1.4.5 Ngai Te Rangi

As we discuss in more detail in chapter 2, Ngai Te Rangi were the last of the major iwi to arrive at Tauranga Moana. Though Government officials and others used the term 'Ngaiterangi' as shorthand for all Tauranga Maori in the nineteenth century, we use the term 'Ngai Te Rangi' here in the more limited sense of hapu that claim descent from the ancestor Te Rangihouhiri. By 1840, these hapu had settled around the edge of the harbour to the east of the Waimapu River, at Otumoetai, at Ongare, and at Otawhiwhi and several other locations in the Te Puna–Katikati area, and on all the major inshore and offshore islands in the inquiry district. Twentieth-century issues including public works takings, rating law, the operation of the Native and Maori Land Courts, and the role of the Maori Trustee are often emphasised in the Ngai Te Rangi claims. We do not cover those issues in this report. Instead, we focus on the raupatu-related issues of the following claims.

(1) Ngai Tukairangi (Wai 211)

Wai 211 was lodged by Mahaki Ellis on behalf of Ngai Tukairangi. Issues highlighted include the war, surrender, and raupatu at Tauranga; the individualisation of title; the Te Puna–Katikati purchase; the return of land and its subsequent alienation; and twentieth-century

33. Claim 1.48. Claims to the Waitangi Tribunal relating to Ngati Pukenga interests at Tauranga that may be reported on after the stage 2 Tauranga inquiry include Wai 210, which was lodged by Keepa Smallman and concerns public works takings: see claim 1.7.

34. Claim 1.36; docs L21, N22

35. Claim 1.41; paper 2.330

attempts by the Crown to address the grievances of Tauranga Maori. Ngai Tukairangi presented evidence to the Tribunal at Opureora Marae on 5 and 6 December 2000.[36]

(2) Matakana Island hapu (Wai 228, Wai 266, Wai 854)

Wai 228, Wai 266, and Wai 854 were lodged on behalf of Matakana hapu by Taiawa Kuka, the late Sonny Tawhiao, and John Toma respectively. The claims emphasise the Government attack on Tauranga Maori, raupatu, and the process by which land was returned to Matakana Maori and subsequently alienated. Three hapu with interests in Matakana Island – Ngai Tuwhiwhia, Ngati Tauaiti, and Ngai Tamawhariua – presented their evidence jointly to us at Opureora Marae on 4 and 5 December 2000. These hapu have interests in other areas as well as Matakana.[37]

(3) Ngati He (Wai 342)

Wai 342 was lodged by Tane Kaiawha on behalf of Ngati He, a hapu from the eastern harbour area around Maungatapu. The submissions pay particular attention to the CMS purchase, Ngati He's pre-1860 contact with Europeans; the war, surrender, and raupatu at Tauranga; the individualisation of title; and the alienation of returned land. Evidence was presented by Ngati He at Maungatapu Marae on 7 and 8 December 2000.[38]

(4) Ngati Makamaka (Wai 353)

Wai 353 was lodged by Patrick Nicholas. According to the claimant, Ngati Makamaka is a group with customary interests around Mauao, Otumoetai, Otamaha, and Matapihi. The submissions were principally concerned with the pre-1860 relationship between the Crown and Maori, the raupatu at Tauranga, and the legality of various Crown actions in Tauranga. No claim-specific evidence was presented on behalf of Wai 353 claimants at any of our hearings.[39]

(5) Ngati Kuku (Wai 489, Wai 947)

Wai 489 was lodged by Toa Faulkner. Ngati Kuku are centred on eastern harbour land around Mauao. No hearing was held specifically to hear Ngati Kuku's evidence. Wai 947 is a claim lodged by Hori Ngatai on behalf of Ngati Kuku. Chief among the concerns of these claimants is the legality of the application of the confiscation Acts, the war at Tauranga, and the individualisation of title.[40] The Tribunal received Wai 947 after the final date for the lodging of claims to be heard as part of this inquiry. However, because there was some misunderstanding over

36. Claim 1.8; docs J39, N10
37. Claims 1.10, 1.10(a)–(c), 1.11, 1.11(a), 1.56; docs J35, N19
38. Claims 1.13, 1.13(a), (b); docs J41, N7
39. Claims 1.14, 1.14(a); doc N13
40. Claims 1.21, 1.21(a), 1.60; docs N1, N4

who was to be named as the claimant in Wai 489, the Tribunal allowed Ngatai's claim to be included in the inquiry.[41]

(6) Ngai Tamawhariua ki Katikati (Wai 42(c), Wai 522)

Wai 42(c) and Wai 522 were lodged by Kevin Bluegum and David Murray on behalf of Ngai Tamawhariua and relate to interests in the Te Puna–Katikati area. In these claims, particular attention is given to the war at Tauranga, the confiscation legalisation, the Te Puna–Katikati purchase, and the alienation of the hapu's reserves in the Te Puna–Katikati area. Evidence in support of Ngai Tamawhariua ki Katikati's claim was heard in the week beginning 5 March 2001 at Te Rereatukahia Marae.[42]

(7) Te Runanga o Ngai Te Rangi (Wai 540)

Wai 540 was lodged by Kihi Ngatai on behalf of the Ngai Te Rangi iwi as a whole. This claim gives particular emphasis to the assertion that Ngai Te Rangi suffered no differently to other Tauranga iwi from the effects of the raupatu. As evidence of this, submissions pointed to the raupatu, the war, and the alienation of ancestral lands and other resources. Evidence in support of Wai 540 was heard by the Tribunal at Whareroa Marae in the week starting 25 September 2000.[43]

(8) Nga Potiki (Wai 717)

Wai 717 was lodged by Matire Duncan and others on behalf of Nga Potiki, a hapu based in the east of the inquiry district. It focuses on the confiscation legalisation, the war, the individualisation of title, and the return of land. Nga Potiki claimants presented evidence at Tamapahore Marae in the week starting 28 June 1999.[44]

(9) Te Whanau a Tauwhao, Te Ngare (Wai 755, Wai 807)

Wai 755 was lodged by Desmond Tata, Wai 807 by Tureiti Stockman. The claims focus on the Kingitanga, the role of Hori Tupaea in the war, the raupatu, the return and subsequent alienation of hapu land, and the Crown's role in purchasing land. Te Whanau a Tauwhao and Te Ngare are hapu with traditional interests in both the inshore and the offshore islands, in part of Katikati, and at Otumoetai. However, these claims are primarily concerned with Motiti Island (Wai 755) and Tuhua and Rangiwaea Islands (Wai 807). No evidence was presented to the Tribunal relating particularly to either of these claims.[45]

41. Papers 2.401; 2.402
42. Claims 1.1(c), 1.24, 1.24(a); docs K26, N8
43. Claims 1.25, 1.25(a), (b); doc I27
44. Claims 1.46, 1.46(a); docs E3, N12
45. Claims 1.49, 1.52; doc N6

(10) Ngai Tauwhao ki Otawhiwhi (Wai 938)

Wai 938 was lodged by Te Karehana Wicks on behalf of the Otawhiwhi portion of Te Whanau a Tauwhao. However, in this inquiry the claimants have chosen to use the alternative name of Ngai Tauwhao. As noted above, other representatives of this hapu have made claims regarding island lands in which Te Whanau a Tauwhao claim an interest (Wai 755, Wai 807). Wai 938 focuses on the lands at Otawhiwhi which were reserves granted to the hapu from within the Te Puna–Katikati purchase blocks. No evidence relating specifically to the claim was heard by the Tribunal, but Ms Wicks presented evidence relating to the Otawhiwhi lands on behalf of the Te Runanga o Ngai Te Rangi claim (Wai 540).[46] Wai 938 was lodged after the November 2000 cut-off point, but the Tribunal allowed it to be heard as part of the Tuaranga Moana inquiry because the issues it raised were sufficiently differentiated from other claims and best heard as part of the raupatu inquiry.[47]

1.4.6 Hauraki iwi

(1) Hauraki Maori Trust Board, Marutuahu (Wai 100, Wai 454, Wai 650, Wai 812)

Wai 100 and Wai 650 were lodged by Toko Te Taniwha on behalf of the Hauraki Maori Trust Board; Wai 454 by Walter Taipari on behalf of Marutuahu; and Wai 812 by Clive Majurey, also on behalf of Marutuahu. (Marutuahu is a confederation of the Ngati Tamatera, Ngati Maru, Ngati Paoa, and Ngati Whanaunga iwi.) Wai 100, Wai 454, and Wai 812 are claims that have also been heard as part of the Tribunal's Hauraki district inquiry. In their evidence and submissions to this inquiry, the Hauraki claimants emphasised Marutuahu's rights in Te Puna–Katikati and the role of Hauraki iwi in the Waikato and Tauranga wars. Evidence on behalf of the Hauraki claimants was heard at Ngahutoitoi Marae in Paeroa from 8 to 10 October 2001.[48]

(2) Other Hauraki claims

The raupatu aspects of the following claims are also covered in this report in so far as they concern the Tauranga inquiry district:

46. Claim 1.59; docs 125, n18

47. Paper 2.369. Ngai Te Rangi claims not covered in this report but possibly to be included as part of the stage 2 inquiry include: Wai 465, lodged brought by Linda Grey and concerning Kaitimako B and C public works takings; Wai 603, lodged by the late Wirepa Te Kani on behalf of the Papakanui Trust and concerning blocks in the Papamoa School site; Wai 636, lodged by Rangi Makarauri on behalf of the Makarauri and Tipiwai Whanau and concerning public works takings at Papamoa School; Wai 668, lodged by the late Wi Parera Te Kani on behalf of the owners of the 'Ngai Tukairangi Block' and concerning the application of public works legalisation; Wai 715, lodged by Jackson White on behalf of the Te Uretureture Charitable Trust and concerning the Katikati sewage pipeline and several issues relating to local government action on Matakana; Wai 773, lodged by Tureiti Stockman on behalf of the successors of Penetaka Tuaia and concerning lot 210, parish of Te Puna; Wai 817, lodged by Neil Hirama on behalf of the Hirama whanau and concerning public works takings in the Whareroa block; Wai 821, lodged by Reginald Hodge and concerning Maori customary fishing. See claims 1.20, 1.28, 1.31, 1.31(a), 1.37, 1.39, 1.39(a), 1.45, 1.45(a), (b), 1.50, 1.53, 1.54

48. Claims 1.34, 1.34(a); docs M31, N16

- Wai 365: lodged by Rawiri Tooke and concerning Matakana forestry land.
- Wai 714: lodged by Hane Williams on behalf of the Ngati Koi Claimant Trust and partially concerning land located at Athenree.
- Wai 778: lodged by Te Wiremu Mataia on behalf of Te Runanga a Iwi o Ngati Tamatera and concerning lands and taonga of the tribe.[49]

1.4.7 Representative claims (Wai 645, Wai 701)

Wai 645 is the claim of the Tauranga Moana Maori Trust Board and was lodged on its behalf by Enoka Ngatai. It is largely concerned with the Tauranga Maori Trust Board Act 1981, the legislation that brought the trust board into being. Wai 701 was lodged on behalf of the Athenree Claims Committee by Matiu Ellis and Colin Bidois. The committee was formed by representatives of several western Tauranga hapu in order to bring a claim concerning the Crown-licensed Athenree Forest, which is near Katikati. The claim focuses on the Te Puna–Katikati purchase, raupatu, the return of land, and the 1927 Sim commission. Wai 701 claimants seek the 'return' of Athenree Forest to the 'whanau and hapu of Katikati and Te Puna'.[50]

1.4.8 Withdrawn claims

The following claims were withdrawn by the claimants while the inquiry was in progress and are not reported on:

- Wai 209: lodged by Jim Gray on behalf of the Otawa Kaiate Trust on 13 April 1987 and concerning the Otawa blocks. The claim was withdrawn on 20 October 1995.
- Wai 356: lodged by Patrick Nicholas on behalf of Ngati Tokotoko on 31 May 1993. The claim was withdrawn on 11 August 1995.
- Wai 383: lodged by Colin Bidois on 13 September 1993 and concerning land in the Te Puna–Katikati area. The claim was withdrawn on 17 June 1998.[51]

1.4.9 Raupatu claim not reported on (Wai 159)

Wai 159 is a claim concerning Tuhua Island that was lodged by Isobel Berkett and others on 10 August 1990. It alleges that the rightful owners of Tuhua were called 'Te Urungawera'. According to the Wai 159 claimants, following confiscation the island was returned not to Te Urungawera but to others, in breach of the Treaty. A research report on Tuhua Island was

49. Claims 1.18, 1.18(a), 1.44, 1.51; papers 2.372, 2.400
50. Claims 1.33, 1.40
51. Papers 2.55, 2.54, 2.174

commissioned by the Waitangi Tribunal, written by Suzanne Woodley, and sent to the claimants in July 1993. This report concluded that there was no basis for the claimants' allegation.[52]

Early in 1993, a trustee of the Mayor Island Trust Board, the trust administering the island on behalf of its Maori owners, stated to the Maori Land Court that the Wai 159 claim was preventing the transfer of shares in the island from the Crown to the trust. The chairperson of the Tribunal was concerned that, if the Wai 159 claim were not based on sufficient evidence, it should not be allowed to hold up the return of the shares. He therefore directed that the claimants file with the Tribunal before the end of April 1994 'precise particulars' of the alleged Crown acts or omissions in breach of the Treaty and the evidence supporting any such allegations. Since no such filing was made by the Wai 159 claimants in the time prescribed, we declined to inquire into or report on the claim.[53] However, other claims concerning Tuhua are covered in this report, as we have noted above.

1.5 Treaty Principles

1.5.1 The Treaty of Waitangi

The Waitangi Tribunal is required by its empowering statute, the Treaty of Waitangi Act 1975 and its amendments, to examine claims by Maori that they have been prejudiced by any legislation, policies, acts, or omissions of the Crown since 1840 that are contrary to the principles of the Treaty of Waitangi. The Act recognises the English and Maori texts of the Treaty, and section 5(2) authorises the Tribunal, in claims before it, to 'determine the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them'. There are considerable differences in meaning between the two texts. The Treaty was originally written in English and then creatively reworked into Maori by the Reverend Henry Williams, who wanted to construct a text that he was confident Maori would sign.[54] For some key concepts, Wiliams used transliterations of English words or put Maori words to new uses.[55]

One example that is relevant to the claims before us concerns sovereignty. In the Maori text, Williams used the coined word 'kawanatanga' for sovereignty. The word was formed by joining the transliteration of 'governor' (kawana) with the Maori suffix 'tanga'. In article 1 of the English text, the chiefs ceded to the Queen of England 'all the rights and powers of sovereignty'. But, in the Maori text of article 1, they gave to the Queen 'te Kawanatanga katoa o o ratou wenua' ('the complete government over their land', as Sir Hugh Kawharu translates it[56]).

52. Paper 2.27; doc A7
53. Claims 1.3, 1.3(a); paper 2.36
54. Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books Ltd, 1995), pp 39–43
55. Bruce Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', in *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, edited by I H Kawharu (Auckland : Oxford University Press, 1989), pp 300–312
56. I H Kawharu, 'Appendix', in *Waitangi*, p 321

In English law, the notion of sovereignty is equated with supreme lawmaking authority, the exercise of which will overrule any inconsistent law made in the exercise of a lesser authority. That understanding of sovereignty would inevitably narrow the meaning attributed to the guarantee given to Maori in article 2 of the English text of 'the full exclusive and undisturbed possession' of their lands and other properties. It is even more at odds with the Maori text. In this, the grant to the Queen of 'kawanatanga' in article 1 is made in conjunction with the guarantee to the chiefs in article 2 of their 'tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa' (rendered by Kawharu as 'the unqualified exercise of their chieftainship over their lands, villages and all their treasures'[57]). Whatever vague notions the chiefs may have had of the meaning of kawanatanga over their lands, they certainly knew the meaning of tino rangatiratanga, or full chieftainship, over their lands. To them, the Queen's guarantee of tino rangatiratanga meant that neither she nor her representatives in New Zealand could take away chiefly control over their land without their assent.

Another relevant difference between the two texts of the Treaty concerns the nature of the properties over which continued Maori control was promised. In the English text of article 2, Maori are guaranteed the 'full exclusive and undisturbed possession of their Lands and Estates Forests and Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession', though they yielded to the Crown the sole right to purchase land they wished to sell. The Maori text of article 2 both reduced and enlarged aspects of the English version. On the one hand, it omitted the explicit guarantee of forests and fisheries. On the other hand, 'taonga', interpreted as 'other properties' in the English text, amounted, in Maori understanding, to more than mere physical objects and included all things that were valuable to Maori, including such intangibles as language. The term 'taonga' is not easily defined but, as the Tribunal observed in its *Te Whanau o Waipareira Report*, it is generally critical that there be a spiritual link between a taonga and the people and an obligation on them to protect it for future benefit. By way of example, that Tribunal cited the following pepeha:

> *Kia uhia rano te mana, te ihi, te wehi, te tapu a te Atua ki runga, katahi ka waiho ai ki nga kaitiaki hei manaaki ma nga whakatupuranga e tupu ake – he taonga kei reira.*
>
> *A property (material or non-material) becomes a taonga when, with divine blessing, it is entrusted for the benefit of future generations.*[58]

But whether we use the English or Maori text of article 2, it is evident that the Crown could not in normal circumstances unilaterally infringe the 'full, exclusive and undisturbed possession' or the 'tino rangatiratanga' of Maori over their land (and other possessions or taonga) without their ready assent through their chiefs. As we explain in the main body of this report,

57. Ibid
58. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 23

the Crown could not use its kawanatanga authority unilaterally to alter Maori customary tenure and provide a new means of alienation of Maori land (in place of the Crown's right of pre-emption), or to confiscate or compulsorily take Maori land. It needed to consult with the chiefs. This was especially true of the land confiscations discussed in this report, since Maori were unrepresented in the New Zealand Parliament at the time. Nevertheless, we consider that, having consulted the chiefs, the Crown may have had a residual right, inherent in its sovereign authority, to override chiefly authority over land. As the *Turangi Township Tribunal Report 1995* put it: 'if the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in article 2 it should be only in exceptional circumstances and as a last resort in the national interest.'[59] We need to explore whether the confiscation of land and the alteration of tenure in Tauranga were 'exceptional circumstances' and 'in the national interest'.

The Maori text of the Treaty of Waitangi has always been important to Maori, because it was the version signed by nearly all of the 530 or so Maori signatories. But before 1975, the English text was the only officially recognised version of the Treaty, and it was assumed that it gave the Crown unfettered lawmaking power in relation to Maori and their land. The passing of the Treaty of Waitangi Act 1975, with its clear recognition of the two texts of the Treaty, has radically altered the situation. While the Act does not prefer one text over the other, legal rules about the fair interpretation of ambiguous treaty provisions support the view, adopted by the Tribunal in its *Report on the Orakei Claim* that, where there are differences between the two texts of the Treaty, 'considerable weight should be given to the Maori text since this is the version assented to by virtually all Maori signatories'.[60] As a consequence, that Tribunal concluded that the sovereignty ceded to the Crown in article 1 of the Treaty needed to be qualified by the recognition of tino rangatiratanga in article 2. It added that, to Maori, 'kawanatanga' (as used in the Maori text) was likely to have meant the right to make laws for peace and good order and to protect the mana of Maori. That meaning, the Tribunal continued, 'is less than the supreme sovereignty of the English text and does not carry the English cultural assumptions that go with it, the unfettered authority of Parliament or the principles of common law administered by the Queen's Judges in the Queen's name'.[61] Subsequent Tribunals have reiterated that view. For instance, in its *Ngai Tahu Report 1991*, the Tribunal said that tino rangatiratanga 'necessarily qualifies or limits the authority of the Crown to govern. In exercising its sovereignty it must respect, indeed guarantee, Maori rangatiratanga – mana Maori – in terms of article 2.'[62] We follow that approach in this report and say that the Crown,

59. Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 285
60. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: GP Publications, 1987), p 180
61. Ibid, p 189
62. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 236–237

in exercising its sovereign authority while dealing with Tauranga Maori, had to respect their tino rangatiratanga, or unqualified exercise of chieftainship.

The differences between the two texts of the Treaty may explain why Parliament, in passing the Treaty of Waitangi Act 1975, chose to require the Tribunal to consider claims of breaches of the principles rather than the provisions of the Treaty. Plainly, however, the Tribunal cannot ignore the Treaty's specific provisions, since they are a starting point for the delineation of principles. As Justice Edward Somers of the Court of Appeal put it in 1987, in the leading case *New Zealand Maori Council v Attorney-General* (the *Lands* case), a 'breach of a Treaty provision must . . . be a breach of the principles of the Treaty'.[63] The Tribunal in the *Muriwhenua Land Report* added that: 'As we see it, the "principles" enlarge the terms, enabling the Treaty to be applied in situations that were not foreseen or discussed at the time.'[64] The Privy Council took a similar approach in *New Zealand Maori Council v Attorney-General* in 1994:

> the 'principles' are the underlying mutual obligations and responsibilities which the Treaty places on the parties. They reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty . . . With the passage of time, the 'principles' which underlie the Treaty have become more important than its precise terms.[65]

Apart from a reading of the express terms of the Treaty, guidance as to the nature of its principles is also to be found in the circumstances surrounding the Treaty's signing. The general nature of those circumstances is referred to in the Treaty's preamble, which begins by stating that Queen Victoria was 'anxious to protect' the 'just Rights and Property' of the chiefs and tribes of New Zealand and to secure to them the enjoyment of 'peace and good order'. More specific assistance is gained from the instructions given to Captain William Hobson in 1839 by Colonial Secretary Lord Normanby concerning the reasons for Hobson's mission to establish 'a settled form of Civil Government' in New Zealand.[66] Further guidance as to the Treaty's principles is to be found in the records of the exchanges between Crown officers, missionaries, and Maori when the Treaty was being explained and discussed at the various sites around the country where it was signed.

Bearing in mind these general considerations, we now discuss the principles most relevant to the Tauranga Moana raupatu claims that are the subject of this report.

1.5.2 Treaty principles and the Tauranga raupatu

We begin by noting that, although Treaty principles are often designated by a single word or phrase, they usually need to be explained or qualified at greater length. Some principles flow

63. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 694 (CA)
64. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 386
65. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC)
66. Waitangi Tribunal, *Report on the Orakei Claim*, pp 191, 198, 194

from others, as do various rights, duties, and responsibilities for both parties to the Treaty. We explain as we proceed.

(1) The principle of reciprocity

It is a fundamental principle of the Treaty of Waitangi that Maori ceded sovereignty or kawanatanga to the Crown in article 1 in exchange for the protection by the Crown of Maori tino rangatiratanga, as stated in article 2.[67] As we have noted, the Orakei and other Tribunals stressed the need for the Crown's exercise of sovereignty to be qualified by respect for tino rangatiratanga. In line with some previous Tribunals, we have called this the principle of reciprocity. It is sometimes characterised as an 'overarching principle' that guides the interpretation and application of other principles, such as partnership.[68] We follow this approach in our report. The nature of the relationship has been consistently described by the courts and the Tribunal as a reciprocal one, along with the obligations and mutual benefit that were intended to flow from it. For example, in its *Report on the Mangonui Sewerage Claim*, the Tribunal said:

> The basic concept was that a place could be made for two peoples of vastly different cultures, of mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed . . . It is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.[69]

The Taranaki Tribunal put it even more simply: 'When peoples meet, the authority of each is to be respected, and the question is how, in the interests of peace, respective authorities are to be reconciled.'[70]

(2) The principle of partnership

The notion of a balance of interests is reflected in the now well-known description of the Treaty relationship as akin to a 'partnership' between the Crown and Maori. As expressed by the president of the Court of Appeal in the *Lands* case, 'the Treaty signified a partnership between the races', and each partner had to act towards the other 'with the utmost good faith which is the characteristic obligation of partnership'.[71] He also added that 'the duty to act reasonably and in the utmost good faith is not one-sided. For their part the Maori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible ministers, and reasonable cooperation.'

---

67. Waitangi Tribunal, *The Turangi Township Report 1995*, p 284
68. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), p 113 ; Waitangi Tribunal, *The Turangi Township Report 1995*, pp 284–285
69. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wellington: Department of Justice, Waitangi Tribunal, 1988), p 4
70. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 82
71. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 665 (CA)

Other judges made similar comments.[72] Since then, the principle of partnership has been constantly reiterated in Tribunal reports. We select one view that captures the essence of partnership: that 'Maori must recognise those things that reasonably go with good governance just as the Crown must recognise those things that reasonably go with being Maori'.[73]

(3) The principle of active protection

As the president of the Court of Appeal stated in the *Lands* case, both parties to the partnership have obligations. The Crown's obligation, he continued, is 'not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable'. Referring to passages in the Tribunal's *Report on the Motunui–Waitara Claim*, *Report on the Manukau Claim*, and *Report on the Te Reo Maori Claim* that supported that proposition, he described them as 'undoubtedly well founded'.[74] He also described the Crown's responsibility as 'analogous to fiduciary duties'.[75] However, the principle of active protection goes beyond the Crown's obligation to protect specified Maori resources, as spelled out in article 2 of the Treaty. As several Tribunal reports have argued, the Crown also needs to ensure that Maori retain a sufficient endowment of land and other resources, and receive effective Government aid to fully develop them in order that they can share in the economic benefits that have flowed from colonisation.[76] The fiduciary obligation also applies to other aspects of Government policy, such as providing for the health and welfare of Maori.[77] Such affirmative action is not a modern invention but was explicit in Normanby's instructions to Hobson and in both the preamble and article 3 of the Treaty.

(4) The principle of redress

The Crown's fiduciary responsibilities have other ramifications. For instance, the Muriwhenua land Tribunal described the principle of active protection as embracing three other key elements of the Treaty relationship – honourable conduct, fair process, and recognition by the Crown and Maori of one another's authority.[78] Elaborating on the requirements of fair process, that Tribunal noted both that the Treaty, in effect, promised the 'necessary laws

72. Waitangi Tribunal, *Report on the Orakei Claim*, p 207

73. Waitangi Tribunal, *Report on the Motunui–Waitara Claim*, p 52(b) (as quoted in Waitangi Tribunal, *Te Whanau o Waipareira Report*, p 29)

74. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641, 665 (CA). See also the similar statements of the other four judges at pages 682, 693, 703, and 716.

75. Ibid, p 664

76. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, pp 195–196; Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wellington: Brooker and Friend Ltd, 1990), pp 31–32; Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), pp 40–41

77. Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 49–57; Waitangi Tribunal, *Te Whanau o Waipareira Report*, pp 213–234

78. Waitangi Tribunal, *Muriwhenua Land Report*, p 388

and institutions' and that Hobson had promised that any Maori land unjustly acquired in pre-Treaty transactions would be returned.[79] Colonial Secretary Lord Normanby stipulated that there should be an independent protector of aborigines to safeguard Maori interests, especially in negotiations over the sale of their land.[80] From all this, the Muriwhenua land Tribunal deduced the principle that 'the Government should be accountable for its actions in relation to Maori, that State policy affecting Maori should be subject to independent audit, and that Maori complaints should be fully inquired into by an independent agency'.[81]

Being accountable, the Crown needed to provide redress for Treaty grievances. Redress was required in order to restore the honour and integrity of the Crown and the mana and status of Maori. Writing in 1987 about historical tribal grievances where the prejudice may be so extensive as to be impossible to compensate, the Tribunal's chairperson described the purpose of redress as being to 'rebuild the tribes and furnish those needing it with the land endowments necessary for their own tribal programmes'. That approach, he continued, 'seems more in keeping with the spirit of the Treaty and with those founding tenets that did not see the loss of tribal identity as a necessary consequence of European settlement'.[82]

Clearly, redress has to be considered by the Crown when, under the Treaty of Waitangi Act 1975, the Tribunal finds that claimants have been prejudiced by an action or omission of the Crown. Indeed, the Act and its important retrospective amendment of 1985 are an embodiment of the principle of redress; a recognition that the Crown should redress past breaches of the principles of the Treaty.

(5) The principle of equal treatment

The principle of equal treatment applies not only to the Crown's treatment of Maori and other New Zealanders but also to the Crown's treatment of Maori, one with another and one iwi with another. In the Tribunal's *Maori Development Corporation Report*, the Crown's duty to act impartially as between iwi was identified:

> The issue of inter-tribal rivalry was debated at Waitangi and had been discussed amongst Maori for several years previously. The missionaries had long endeavoured to mediate between the tribes and, in explaining and promoting the Treaty, led Maori to believe that, on its acceptance, a new order would follow in which disputes would be settled and all tribes provided for fairly.
>
> These assurances were influential and, at the debate at Waitangi, crucial. Many Maori there called upon Governor Hobson to 'go' and to leave the country to the Maori. Hobson recorded that the speech of Tamati Waka Nene 'turned aside' that feeling. After referring to

79. Waitangi Tribunal, *Muriwhenua Land Report*, p 390
80. Orange, p 30
81. Waitangi Tribunal, *Muriwhenua Land Report*, p 390
82. Waitangi Tribunal, *Waiheke Island Claim* (Wellington: Government Printing Office, 1987), p 41

> the prevailing state of disorder, the chief said 'O Governor! Sit. I, Tamati Waka, say to thee, sit. Do not thou go away from us; remain for us, a father, a judge, a peacemaker'.[83]

The report added that, in promising 'good governance', the Crown should not 'allow one iwi an unfair advantage over another'. This was described as a 'principle or duty arising from the Treaty that the Crown act fairly and impartially towards Maori'.[84]

Their hope that the Governor would act as a judge and peacemaker between the tribes encouraged Nene and many others to sign the Treaty. As they saw it, this was the main objective of the kawanatanga or governance that they had ceded to the Crown in article 1 of the Treaty. Maintaining peace between iwi also meant that the Crown needed to treat iwi equally, and not favour one at the expense of others. This was particularly important in view of the imbalances and animosities that had arisen from some 20 years of musket warfare prior to 1840. Those animosities would be rekindled during the war between the Crown and Maori in the 1860s and result in the recruitment by the Crown of some Maori to fight against their old enemies. When we apply the principle of acting fairly and impartially towards Maori to the situation in Tauranga, we particularly examine whether the Crown treated the hapu of Tauranga equally when awarding land in the aftermath of the confiscation.

1.5.3 Previous raupatu inquiries

Finally, we note that the Tribunal has already reported on the Taranaki and Ngati Awa confiscations, while the Crown has dealt separately with the Waikato confiscation. These reports and the Waikato–Tainui legislation deal with raupatu claims in light of the principles of the Treaty. We discuss the significance for Tauranga of these previous raupatu inquiries in chapter 6. Here, we merely note, by way of introduction, two precedents from the Tribunal's *Taranaki Report* and the Crown's Waikato–Tainui settlement.

The Taranaki Tribunal was blunt: 'The Treaty guarantee to Maori of their lands and estates for as long as they wished to keep them was an unequivocal undertaking, with which the [New Zealand Settlements] Act and policies were in direct conflict.' The Tribunal added that 'No one has seriously contended otherwise' and that Crown counsel in that inquiry had 'admitted the Taranaki confiscation was an injustice and a breach of Treaty principles'.[85] Meanwhile, the Crown acknowledged in the Waikato Raupatu Claims Settlement Act 1995 that 'grave injustice was done to Waikato when the Crown, in breach of the Treaty of Waitangi, sent its forces into the Waikato, occupied and subsequently confiscated Waikato land, and unfairly labelled Waikato as rebels'.

---

83. William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand, February 5 and 6 1840* (Wellington: Government Printer, 1890), p 27 (as quoted in Waitangi Tribunal, *Maori Development Corporation Report*, p 32)
84. Waitangi Tribunal, *Maori Development Corporation Report*, pp 31–32
85. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, p 131

We need to apply the same standards to the Tauranga raupatu. In measuring the behaviour of the Crown and Tauranga Maori according to the principles of the Treaty, we need to give particular consideration to the principle of reciprocity, enunciated above. We have to consider the extent to which the Crown was tempering its exercise of kawanatanga by respect for tino rangatiratanga; and how the Treaty partners were observing their respective responsibilities in the difficult circumstances of the war.

1.6 The Report

With these principles to guide us, we now proceed to report on the claims before us. First, we describe the Maori occupation of the Tauranga Moana district up until the 1860s. We then examine the relationship between Tauranga Maori and the Crown between the signing of the Treaty of Waitangi in 1840 and the outbreak of war in Tauranga in 1864. Next, we devote two chapters to the war and its aftermath before examining the confiscation, the Crown's acquisition of Te Puna–Katikati and the CMS blocks, the return of land in the confiscation district, the alienation of that returned land, and the ongoing protests by Tauranga Maori concerning the raupatu. We make findings as necessary, and these are summarised, with our recommendations, in the final chapter of this report. These findings include both conclusions on issues of historical interpretation (called findings of fact in this report) and conclusions on claimant allegations of Treaty breach (called Treaty findings).

1.7 Chapter Summary

The main points in this chapter are:

- The raupatu aspects of all Tauranga Moana claims were addressed in hearings held between February 1998 and January 2002.
- We decided in 1999 that we would proceed to report on raupatu issues in this current report before hearing and reporting on non-raupatu issues in a subsequent report, if that proves necessary.
- In this report, the various allegations by the claimants of Crown Treaty breach are evaluated in the light of the overarching Treaty principle of reciprocity – namely, that the Crown is required to temper its sovereign authority or kawanatanga with respect for Maori autonomy or rangatiratanga. Several other Treaty principles, including those of partnership, active protection, redress, and equal treatment, are also of relevance to the task of this Tribunal in reaching findings on the Tauranga raupatu claims.

CHAPTER 2

NGA TANGATA WHENUA

2.1 Introduction

In this chapter, we outline Maori occupation of the Tauranga Moana district in the period up to 1865. We set out briefly the successive migrations into the area before 1800, and introduce the Maori groups that had become tangata whenua there by the early nineteenth century. Then, we discuss in somewhat more detail events from 1818 until the 1840s, during which time the introduction of firearms led to an intensification of intertribal warfare commonly known as the 'musket wars'. Finally, to summarise the situation in 1865, we locate the various Tauranga hapu in terms of their relationships with the land, with each other, and with the peoples of neighbouring districts. Our narrative of the arrival of Pakeha, the signing of the Treaty of Waitangi, and the development of relations between Maori and the Crown will be the subject of chapter 3.

2.2 Ko Mauao te Maunga, ko Tauranga te Moana

'Tauranga' means either a resting place or anchorage for canoes (tauranga waka) or a fishing ground (tauranga ika). Although it is possible the name Tauranga may originally have been given to a specific site within a harbour known as Te Awanui,[1] we use the current designation of Tauranga Moana as the name of the whole harbour area. Over many generations, Tauranga Moana has provided a resting place for countless canoes (including, according to tradition, several of the great ancestral waka which voyaged from the Maori homeland of Hawaiki), and it has kept Maori well-supplied with fish and other kaimoana.

At the southern entrance to Tauranga Moana is Mauao (Mount Maunganui), which stands alone, dominating the surrounding landscape. According to legend, this hill was originally located by the mountain Otanewainuku to the south. Mauao was in love with a neighbouring mountain, Puwhenua, but she was pledged to Otanewainuku, so the lovelorn maunga decided to drown himself in the ocean. He enlisted the help of the supernatural forest-folk, the patupaiarehe, who dragged him to the sea. When they reached the shore, however, the sun

1. Document D7, p 24

rose and the patupaiarehe, who could not stand the sunlight, fled back to the forest. As a result, the hill was stranded in his present location, and was given the name Mauao, indicating that he had been caught or fixed in place by the dawn. The various Maori groups that have moved into the Tauranga area have all formed strong associations with Mauao. There are many sites of significance to Tauranga Maori located on and around this hill: it has been a pa site, a battle site, and a place where important tupuna were buried.[2]

A strong identification with Tauranga Moana and with Mauao unites all the Maori groups of the Tauranga area, and distinguishes them from their neighbours. Many of the tangata whenua who gave evidence before the Tribunal identified themselves with pepeha, or traditional sayings, which included the words: 'Ko Mauao te maunga, ko Tauranga te moana.' We acknowledge that Tauranga hapu also identify with other maunga and features of the landscape which are specific to those hapu and their lands. Nevertheless, we understand that all the hapu of Ngai Te Rangi, Ngati Pukenga, Ngati Ranginui, and Waitaha have associations with Tauranga Moana and with Mauao.

It is not necessary for this report to provide a detailed pre-1840 history of Tauranga Moana, or to summarise the extensive and valuable body of evidence on the settlement of the region which has been heard by the Tribunal. We rely here on the account of traditional history given in the closing submissions made jointly on behalf of a number of hapu of Ngati Ranginui, Ngai Te Rangi, and Ngati Pukenga.[3] This account is generally consistent with the more specific evidence given by experts in tribal history from particular hapu.

The earliest known inhabitants of the Tauranga district were the Nga Marama people, who were conquered and absorbed by later incoming groups. The result of this was that all present-day tangata whenua can trace their descent back to these original people. Maori tradition then tells of the arrival in Tauranga Moana of a series of great voyaging waka from Hawaiki. The first waka to visit was Tainui, whose inhabitants did not settle there but made their final landfall at Kawhia. However, Tainui people were later to settle in neighbouring districts and were to play an important role in Tauranga history. These neighbouring Tainui people were tribes of the Marutuahu confederation in Hauraki to the north, and Ngati Haua and Ngati Raukawa west of the Kaimai Range.

The next waka to make landfall was Te Arawa, whose people settled mainly to the south of Tauranga, apart from Waitaha, who occupied part of the Tauranga district. They shared the district with people of Takitimu, the third waka to arrive. Takitimu landed at Mauao, where the leader of the expedition, Tamateamaitawhiti, placed his people's mauri (an object representing the life principle) on the hill's summit. Ngati Ranginui trace their descent to the people of the Takitimu waka. Together, Waitaha and Ngati Ranginui conquered the Nga Marama people and divided the land between them: Ngati Ranginui took the land west of the Waimapu River, and Waitaha the land to the east.

2. Document A49, pp 6–22
3. Document N11, pp 28–33; doc A18, pp 15–21

Their dominance in the area was challenged, however, when the final Maori migration into the Tauranga district took place. This heke consisted of people of the Mataatua waka, which had landed at Whakatane. They included Ngai Te Rangi, who journeyed along the Bay of Plenty coast until they reached Tauranga, and Ngati Pukenga, who assisted Ngai Te Rangi in displacing Ngati Ranginui and Waitaha from parts of Tauranga Moana.[4] By the end of the eighteenth century, Ngai Te Rangi had gained the ascendancy along the coast and on the offshore islands of Tauranga Moana, while Ngati Ranginui and Waitaha interests predominated in the inland areas east of the Waipapa River. This division between coastal and inland districts should not be overstated, however, since all Tauranga Maori had rights and interests both on the coast and inland.

The area around Tauranga Moana, extending back to the Kaimai Range, was able to support a relatively dense Maori population. Within this area were a large number of hapu, each one occupying and using the resources of a range of different environments. Professor Evelyn Stokes summarised the environments and resources of the district as follows:

> The long coastline provided a variety of habitats in estuaries, mudflats and mangrove swamps, open sandy beaches and rocky shore, for kai moana, seafood, especially shellfish – pipi, tuatua, paua, kuku and other varieties – as well as kina (sea urchins) and koura (crayfish). Fish could be caught in the rivers, sheltered harbour, open ocean and offshore island waters. There were many eeling places in the rivers that flowed into the harbour. Along the coastal lowlands kumara grew well in the mild climate and there was plenty of fern root (aruhe). The forests of the ranges were a valuable source of food in the form of berries and abundant bird life, as well as providing timber for buildings and canoes.[5]

Tauranga Maori made use of these rich resources by migrating between the coast in winter and inland areas in the summer, a pattern that continued well into the twentieth century. A number of witnesses told the Tribunal how, despite the loss and fragmentation of their lands, their families continued this traditional pattern of seasonal resource use when they were growing up.[6] Arapera Nuku submitted evidence of her mother's generation of Ngati Hangarau attempting to maintain their traditional patterns of seasonal movement between the inland bush, where pigs, kereru, and tuna were caught, and the coast, where fish were dried and pipi gathered. Morehu Rahipere presented similar evidence of Ngai Tamarawaho's seasonal movements, inland to gather berries and catch kereru and then to the coast to fish and tend to crops.[7]

We also heard a great deal of evidence from all claimant groups about the continuing importance to them of harbour and coastal resources. They told how, until pollution began to

4. A detailed account of these events from a Ngai Te Rangi perspective was presented to this Tribunal by Hauata Palmer: see doc I20.
5. Document A2, p 3
6. See, for example, doc H8, pp 3–4; doc J28, pp 3–4; doc J34, pp 4–6
7. Document F17, pp 2–3; doc D13, paras 5–6

degrade the marine environment and urban development restricted access, Tauranga Moana and the nearby coastline provided them with bountiful supplies of kaimoana. For example, Tai Taikato of Ngati He told the Tribunal that every year when he was a young man his whanau spent a month at Mauao diving for kina. However, Mr Taikato stated that, as the settlement of neighbouring lands progressed, Ngati He lost access to the coastal environment and became confined to land at Maungatapu. Rangiwhakaehu Walker of Ngai Te Ahi recalled collecting pipi, tuangi, and titiko in the Waimapu and Waikareao Estuaries but stated that because of pollution there was now no kaimoana that could be taken from these places.[8]

Islands in the Tauranga area, particularly Matakana, also provided a home well-supplied with resources for several Ngai Te Rangi hapu. Archaeologist Douglas Sutton told the Tribunal that the volcanic part of Matakana Island has magnificent horticultural soil and has been continuously and intensively occupied for more than 670 years.[9] Archaeological evidence suggests that the Tauranga Moana area generally was one of the most densely settled parts of New Zealand before Europeans arrived.[10] In 1826, one visitor to Tauranga estimated that 2500 people were living on the shores of the harbour. Another estimated the population of the whole district at 6000 in 1831.[11] Because early population estimates such as these were only the impression of visitors to the area, they need to be treated with a degree of scepticism. However, all Pakeha who visited Tauranga before 1840 agreed that, relative to other areas, the Tauranga district sustained a large Maori population.[12]

2.3 The 'Musket Wars'

Whatever the size of the early nineteenth-century Maori population in Tauranga, by 1840 it appears to have suffered a substantial decrease. In part, this was due to introduced diseases, but probably more devastating to Tauranga Maori were the intertribal wars in which they were involved from 1818. As a result of the use of firearms, these conflicts almost certainly caused much greater loss of life than had previous fighting.[13] We heard a great deal of evidence about these wars, and while these accounts differed on points of detail, the differences are not material to the issues before us in this inquiry. It is the outcomes of the wars which are of concern to us here: while the two decades after the fighting ended were generally peaceful, the alliances and enmities formed in the 'musket wars' had a profound effect on the war between the Crown and Maori in the 1860s. Our brief narrative of the wars relies primarily on

8. Document J28, pp 3, 6
9. Document J43
10. Document D7, pp 20–22
11. Document A2, p 4; doc D7, p 22
12. Document D7, pp 20–24
13. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 70–71; doc J2, p 56

the evidence of Ron Crosby, author of a recent book on the subject.[14] Crosby gave evidence on behalf of Ngai Te Rangi, but the basic facts that he detailed are consistent with the evidence given by other claimant groups.

In the first two decades of the nineteenth century, Nga Puhi of the Bay of Islands, Hokianga, and other parts of Tai Tokerau acquired muskets, which they used to dramatic and deadly effect in raids on other parts of the country. Two Nga Puhi raids on Tauranga in 1818 and 1820 caused the death or enslavement of many Maori, but they were followed by a peace agreement between Tauranga Maori and Nga Puhi which was to last until 1830.[15] The Nga Puhi monopoly on firearms did not last for long. By the late 1820s, Ngati Maru of Hauraki were armed with muskets, and in 1828 they launched an attack on Tauranga and destroyed Otamataha Pa at Te Papa. Almost the entire population of the pa was either killed or enslaved, and missionaries who visited shortly after the battle encountered an appalling scene of devastation.[16]

Two years later, Tauranga Maori had an opportunity to take revenge on Ngati Maru when Te Waharoa of Ngati Haua sought their assistance. Te Waharoa wanted to expel Ngati Maru from the Maungatautari area, which they had recently occupied, and Tauranga Maori provided a substantial force to aid him. The two sides clashed at Taumatawiwi in 1830, and although losses were great on both sides, Ngati Maru accepted a peace offer from Te Waharoa which required them to return to Hauraki.[17]

Tauranga Maori were struck by further Nga Puhi raids between 1830 and 1833, but for the most part they successfully fought off these attacks. Tauranga Maori received assistance from Ngati Haua under Te Waharoa during the 1831 raid. Their Te Arawa neighbours were also drawn into the conflict. In 1832, Phillip Tapsell, a flax trader based at Maketu whose first wife was Nga Puhi, supported Nga Puhi during their siege of the Tauranga pa Otumoetai.[18] During the final Nga Puhi raid, in 1833, sections of Te Arawa fought on both sides. Ngati Rangiwewehi supported Tauranga Maori in their defence of Maungatapu Pa, but others of Te Arawa fought alongside Nga Puhi against them. The Ngai Te Rangi pa at Te Tumu fell to a combined force of Nga Puhi and Te Arawa.[19]

The killing of a Ngati Haua rangatira during a visit to Rotorua at the end of 1835 provided the spark for warfare between his iwi, supported by its Tauranga allies, and Te Arawa. In addition to coming to the aid of Ngati Haua, Tauranga Maori had their own reasons for wanting to attack Te Arawa : they wanted revenge for Te Arawa's support of Nga Puhi in 1832 and 1833 and they desired to take control of the flax trade in the region. In March 1836, Te Waharoa led a

14. Ron Crosby, *The Musket Wars: A History of Inter-Iwi Conflict, 1806–45* (Auckland: Reed Books, 1999)
15. Document 113, pp 2–6
16. Ibid, pp 7–9
17. Ibid, pp 9–10
18. Philip Tapsell was the assumed name of Hans Falk. He is also referred to as Hans Tapsell, Hans Felk, and a variety of other combinations: see 'Phillip Tapsell', DNZB, vol 1, p 425.
19. Document 113, pp 9, 11–18

2.3

Map 4: Battle sites, 1820–40

large force of Waikato and Tauranga people against the Te Arawa pa at Maketu. The pa fell to the attackers, who also destroyed Tapsell's trading station.[20] It was now Te Arawa's turn to take the offensive. Differences within Te Arawa were set aside to assemble a large war party, which took the Ngai Te Rangi pa at Te Tumu, just west of Maketu. Few of the defenders survived the assault.[21]

The fighting between Tauranga Maori and Te Arawa continued for several years. In early 1837, Te Arawa were able to erect a well-fortified pa at Maketu before Tauranga Maori even became aware of their intention. Te Waharoa made plans to capture Maketu, but he died in August 1838. Ngati Haua and their Tauranga allies made two unsuccessful attacks on Maketu in 1839, while a Te Arawa assault on Maungatapu in February 1840 was also repulsed.[22] This was not the end of the fighting in the Tauranga region, however. In chapter 3, we discuss the renewal of conflict in 1842 between Tauranga Maori and both Te Arawa and the Marutuahu confederation. Nevertheless, by 1840 Maori society was becoming less inclined to resort to warfare to settle disputes. The leadership of Ngati Haua had passed from the warrior Te Waharoa to his son, the Christian convert Wiremu Tamihana. Tamihana had participated in fighting before becoming a Christian. However, from the late 1830s until his death in 1866, he strove for peace among Maori, and between Maori and Pakeha, with the notable exception of a brief period when he took up arms against imperial forces following the invasion of the Waikato in 1863. In 1845 and 1846, he successfully negotiated peace between Te Arawa and their Tauranga and Ngati Haua foes.[23]

Several key points relevant to later chapters of this report emerge from our narrative of the 'musket wars':

- There was a strong alliance between Tauranga Maori and Ngati Haua which involved reciprocal obligations to support each other when attacked.
- There was a history of enmity between Tauranga Maori and most (though not all) of Te Arawa, as well as between Ngai Te Rangi and the Marutuahu confederation (particularly Ngati Maru).
- By 1840, as a result of the warfare with Te Arawa in the 1830s, Tauranga Maori had been driven out of the Maketu and Te Tumu areas.
- By 1840, the Tauranga Maori population was significantly reduced and weakened as a result of some two decades of warfare.[24] Nevertheless, with the exception of no longer occupying the Maketu area, the land rights of the Ngai Te Rangi and Ngati Ranginui hapu remained secure.

20. Document I12, pp 59–60; doc I13, pp 18–20
21. Document I13, pp 21–22
22. Ibid, pp 22–26
23. Evelyn Stokes, *Wiremu Tamihana: Rangatira* (Wellington: Huia Publishers, 2002), pp 123–133
24. A naval officer estimated the population inhabiting the coast of the harbour to be 1000 in 1853. This was in contrast to the much higher population figures stated by European observers in the 1820s and 1830s that are noted above: see doc A2, p 9.

2.4 Hapu and their Territories

In this section, we locate the lands of the various Tauranga hapu. The territories we describe are those that seem to have been in existence at around 1865, before the outbreak of war with the Crown. We also relate these lands to three areas which will be discussed later in this report: the CMS Te Papa blocks, the 50,000-acre confiscated block, and the Te Puna–Katikati blocks. Our identification of the territories of the hapu is based mainly on the evidence and submissions of the claimants themselves. There is some overlap between these territories, but as we explain below, this is common in Maori custom.

2.4.1 Maori customary land tenure

Professor Stokes summarised the broad principles of customary tenure at Tauranga in her response to questions submitted to her by Crown counsel. She argued that present-day hapu politics at Tauranga Moana are not necessarily the same as those of the 1860s, since some old hapu names are no longer used and 'modern hapu focus on the present pattern of marae'. Stokes then explained that neither in the nineteenth century nor today were boundaries between hapu strictly delineated:

> There were areas where various hapu belonged. These, like the high islands of Polynesia, comprised segments of coastal and harbour environments, cultivable areas and inland bush. There were also overlapping rights between and among hapu, which are related to the network of whakapapa and ancestral ties. There was no recognition of an individual alienable property right in Maori customary tenure of land, which can best be described as a system of overlapping and interlocking usufructuary rights derived from ancestry and long occupation. Any rights derived from conquest were reinforced by occupation and marriage, so that children inherited the whakapapa of those who had long occupied the land.[25]

We endorse this description, which is consistent with the views of customary tenure advanced by the Tribunal in various reports.[26] The question of rights derived from conquest will be addressed further below.

As Stokes explained, hapu territories and interests in land should not be viewed in terms of state-like boundaries. We adopt the view stated by the Ngati Awa Tribunal that:

> The question was not where the boundary lay between hapu but which hapu could access a particular resource at what time and for what purpose. Resources could thus be shared

25. Document M6, p 4

26. See particularly the following Waitangi Tribunal reports: *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 14–15, 21–30; *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 131–134; *The Whanganui River Report* (Wellington: Legislation Direct, 1999), pp 28–36; *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 138–142; and *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), pp 32–34.

> and persons from distant hapu could have use rights in a particular resource, like a mussel-bearing rock in a harbour. Access was based simply upon respect for immemorial user and historical relationships with the users . . .
>
> . . . the essence of Maori existence was founded not upon political boundaries, which serve to divide, but upon whakapapa or genealogical ties, which serve to unite or bind. The principle was not that of exclusivity but that of associations.[27]

These comments should be kept in mind when we set out the locations of the Tauranga hapu. In outlining these territories, we simply wish to indicate the areas within which hapu resided and exercised rights. We do not mean to suggest either that any hapu exercised exclusive rights within a defined area or that these hapu did not also exercise some rights outside of the territories set out. The areas of overlap between hapu should cause readers neither surprise nor consternation. In some areas, overlaps and shared interests are particularly apparent: many hapu seem to have shared interests at Otumoetai, for example, while in the inland bush areas there were also some shared resource-use rights.

The territories described below are not necessarily those of 1840. As the Rekohu Tribunal put it, land rights could not be acquired by force after 1840 because the Treaty of Waitangi 'envisaged an end to violence following the establishment of British law', but it does not follow that such rights should be determined on the basis of the position as at that date.[28] Maori were free to continue developing customary rights to land by peaceful means, and clearly did so. One example of this was Ngati Pukenga's return to Tauranga in the 1850s to intervene in a land dispute on the side of Ngati He. Ngati He subsequently gifted lands at Ngapeke to Ngati Pukenga.[29] There were doubtless other adjustments to Maori customary land tenure at Tauranga after 1840 and before Crown intervention from 1865 radically transformed the ownership of land. Accordingly, the hapu territories which we describe here are those which seem to have been in existence at around 1865.

Not only the lands but also the identities of hapu have shifted over time. Many hapu names which appear in the historical record are not commonly used in Tauranga today, either because hapu have changed their names or because one hapu has been absorbed into another. There are also sub-groups within hapu which, over time, may evolve into hapu in their own right. Such processes have been going on within Maori society since time immemorial. In our outline of hapu territories, we focus primarily on present-day hapu who are claimants before us in this inquiry, although we also mention some neighbouring iwi and hapu that have not participated in this inquiry.

---

27. Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp 132–133
28. Waitangi Tribunal, *Rekohu*, p 132
29. Document J2, pp 12–13; doc M2, p 26. Shane Ashby notes that Ngati Pukenga's claim at Ngapeke was also an ancestral one: see doc M2.

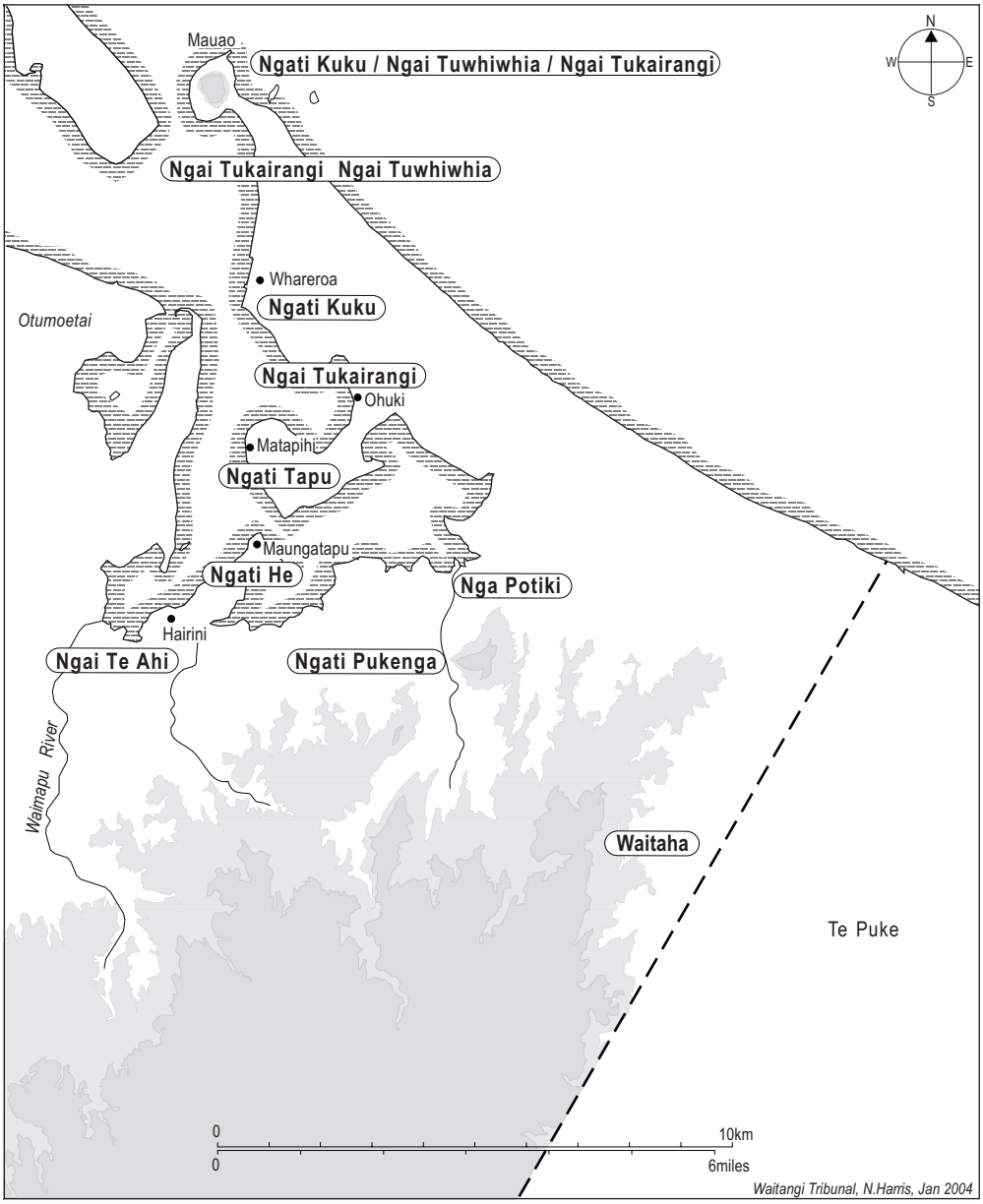
2.4.2 Lands of Tauranga hapu

Working very roughly from east to west, our summary begins with Waitaha. Although Waitaha's heartland is in the Te Puke area, outside our inquiry district, we have already noted their long association with Tauranga Moana. Following the Ngai Te Rangi invasion, Waitaha lost some of their rights along the coast, but they continued to exercise interests in their traditional territory west of the Waimapu River, which they shared with Ngati Pukenga, Nga Potiki, Ngati He, Ngai Te Ahi, and others. Tame McCausland of Waitaha acknowledged that Ngai Te Rangi became dominant on the coast between Mauao and Papamoa, but he asserted that Waitaha still retained interests and rights to collect kaimoana in this area. Further inland, Waitaha interests were largely unaffected by the Ngai Te Rangi conquest, and extended south to Otanewainuku and the Mangorewa River.[30]

Nga Potiki interests were located in Papamoa and the area around Rangataua Harbour, but they also had use rights in the Kaimai hinterland.[31] Ngai Tukairangi also occupied land in the east of the inquiry district. According to claimant witness Mahaki Ellis, Ngai Tukairangi were descended from the grandchild of Rangihouhiri, and following the Ngai Te Rangi heke to Tauranga, they settled around Mauao, Whareroa, Matapihi, Otumoetai, and Otamataha (Te Papa), although their interests are now centred around Whareroa and Matapihi. They also had use rights elsewhere, as Kihi Ngatai explained to us. These included rights to resources at Ongare Point and in the bush around Taumata and Te Poripori.[32] Ngai Tukairangi's territory overlaps with that of Ngati Kuku, and indeed there is some dispute between different claimant groups as to whether or not Ngati Kuku are part of Ngai Tukairangi. Ngati Kuku had interests at Mauao, Whareroa, Otumoetai, Te Wairoa, and Kaimai, and on Karewa and Tuhua Islands. Toa Faulkner, a Ngati Kuku claimant, told us that Whareroa Marae was established by the Ngati Kuku rangatira Hori Ngatai in the 1860s, after the hapu had relocated from Otumoetai. By the late 1860s, Whareroa had become Ngati Kuku's principal area of settlement.[33]

Ngati Pukenga are often considered to be an iwi. However, in the nineteenth century at Tauranga their political and social structure was similar to that of hapu in the district. This shows how the tendency of Pakeha to view tribes as either iwi or hapu does not fit well with the realities of the situation in Tauranga at that time. We discuss this in more detail below. In this report, we therefore refer to Ngati Pukenga as both an iwi and as a hapu, without prejudice and depending on the relevant context. Ngati Pukenga are also in a somewhat unusual position, in that they were a highly mobile people whose interests were located not only in various parts of the Tauranga Moana district but also in other, distant parts of the North Island. In the 1800s, Pakeha and Maori alike frequently referred to the section of the tribe living at Manaia on the Coromandel Peninsula as 'Te Tawera'. However, for simplicity's

30. Document L8, pp 14–15; doc N22, pp 4–6
31. Document N12, pp 4–6
32. Document I16, p 3; doc J5, p 3; doc N10, pp 5–6
33. Document C1, p 224; doc I17, p 2; doc N4, pp 3–4



Map 5: Approximate location of some hapu interests – east harbour

sake, we will refer to all sections of the tribe as Ngati Pukenga throughout this report. The group's Tauranga interests were principally at Ngapeke and Rangataua Harbour (together with Nga Potiki and Ngati He), Matapihi, Papamoa, and Katikati. Ngapeke came to be Ngati Pukenga's main settlement at Tauranga in the second half of the nineteenth century.[34]

Ngati He's interests extended from their principal settlement at Maungatapu inland via Otawa and Waoku to Otanewainuku, and they had shared interests at Matapihi and Te Papa. Claimant witness Tai Taikato stated in his evidence that, for as long as Ngati He have

34. Document M2, pp 24–25; doc N21, pp 4–5

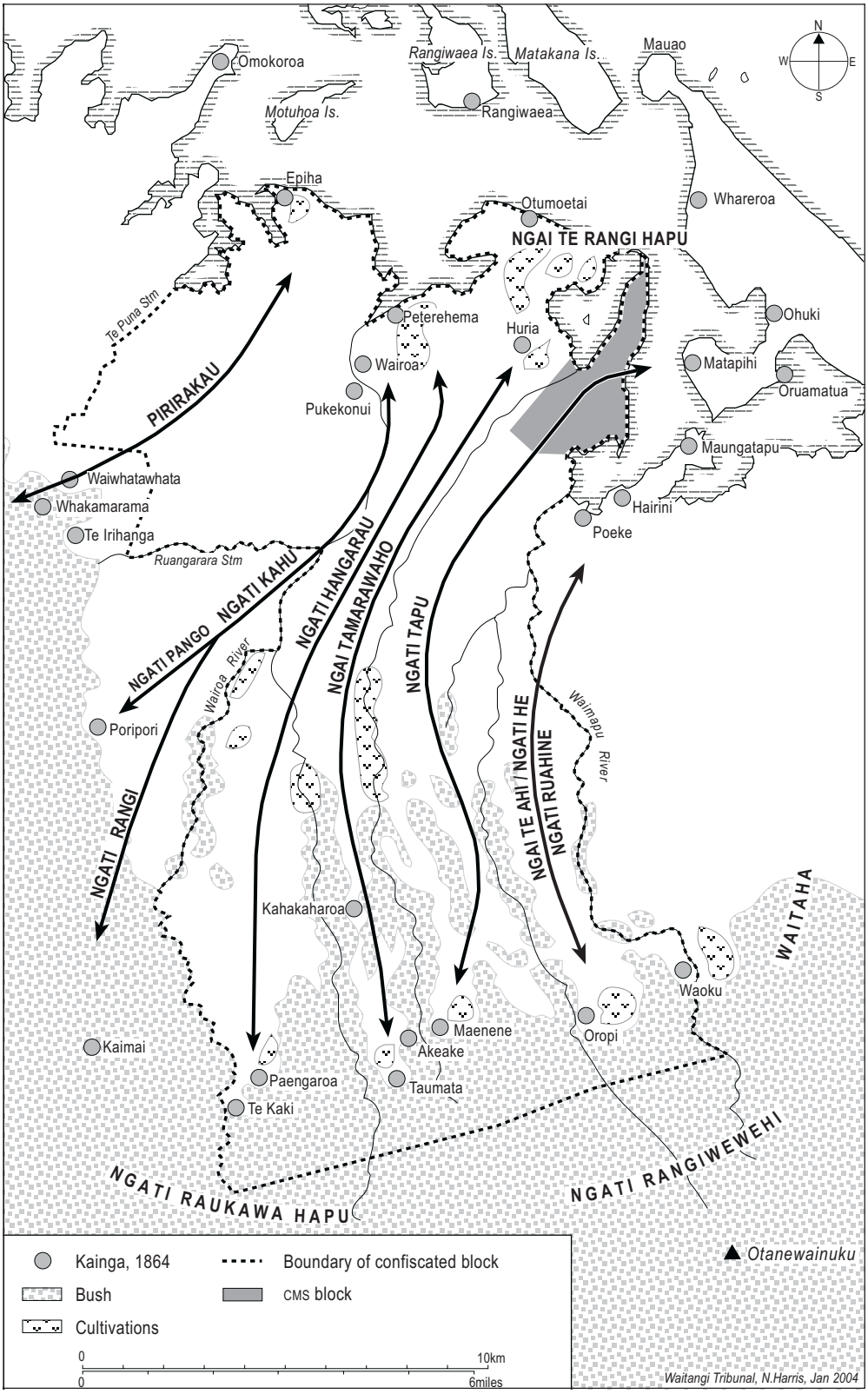
maintained a distinct identity, they have been associated with Maungatapu.[35] Ngati Ruahine have participated in this inquiry only to a limited extent, but they have asserted interests along the Waimapu River and use rights in the inland bush areas.[36] Ngai Te Ahi's interests also ran along both sides of the Waimapu River, from Hairini and Poike on the coast to Oropi and Waoku in the bush.[37] The customary interests of Ngati Tapu lay within an area stretching from Otumoetai, Te Papa, and Matapihi inland to Maenene in the bush. During the Ngati Tapu hearing, Tureiti Stockman told of reburying koiwi at Te Ti, the Ngati Tapu urupa at Matapihi, which had been unearthed when a bridge was built at Otumoetai in the 1950s. He pointed to this as evidence of Ngati Tapu's acknowledged status as one of the tangata whenua groups of Otumoetai. Mr Stockman was also careful to point out that the hapu's rohe overlapped with that of several other hapu.[38]

Ngai Tamarawaho held rights in an area extending from Otumoetai, Huria, and Te Papa back to Taumata and Akeake in the bush.[39] Further to the west were Ngati Hangarau, their interests extending from Peterehema on the coast along the eastern side of the Wairoa River to the inland kainga of Paengaroa, Te Kaki, and Kaimai.[40] Desmond Tata gave an enlightening illustration of the relationship between Ngati Hangarau and Ngai Tamarawaho when giving evidence to the Tribunal at Huria Marae. In reaching agreement over the allocation of the inland blocks, Taumata and Paengaroa, the respective rangatira of the two hapu, agreed that Ngati Hangarau were teina (younger sibling) in the Taumata blocks but tuakana (older sibling) in Paengaroa, while Ngai Tamarawaho were teina in Paengaroa and tuakana in Taumata.[41]

Ngati Kahu interests also ran along the eastern side of the Wairoa River to the Kaimai watershed, while Ngati Pango and Ngati Rangi (not to be confused with Ngai Te Rangi) had interests on the western side. All three of these related hapu (who submitted a joint claim as 'the Wairoa hapu') had interests on both sides of the river toward the Kaimai Range. They had kainga in the inland bush areas at Te Iriranga, Poripori, and Kaimai.[42] The neighbours of the Wairoa hapu to the west were Pirirakau, whose core area of interest lay between the Wairoa and Waipapa Rivers, with usufructuary rights further west as far as the Aongatete River.[43]

Turning now to those hapu whose interests were centred on the offshore islands and nearby coastal areas, we begin with three predominantly Matakana-based hapu: Ngai Tuwhiwhia, Ngati Tauaiti, and Ngai Tamawhariua. All three of these hapu had interests on Matakana and Motuhoa, around Mauao, and in the Katikati–Athenree area. Ngai Tuwhiwhia also

35. Document I22, p 3; doc J2, pp 15–16; doc J41, pp 6–8; doc J42, p 3
36. Paper 2.343, p 3
37. Document N17, pp 4–5
38. Document H6, p 4; doc N17, pp 4–5
39. Document F20, pp 10–11; doc N23, pp 3–6
40. Document N15, p 3
41. Document F20, p 10
42. Document N14, pp 5–6
43. Document N9, p 7



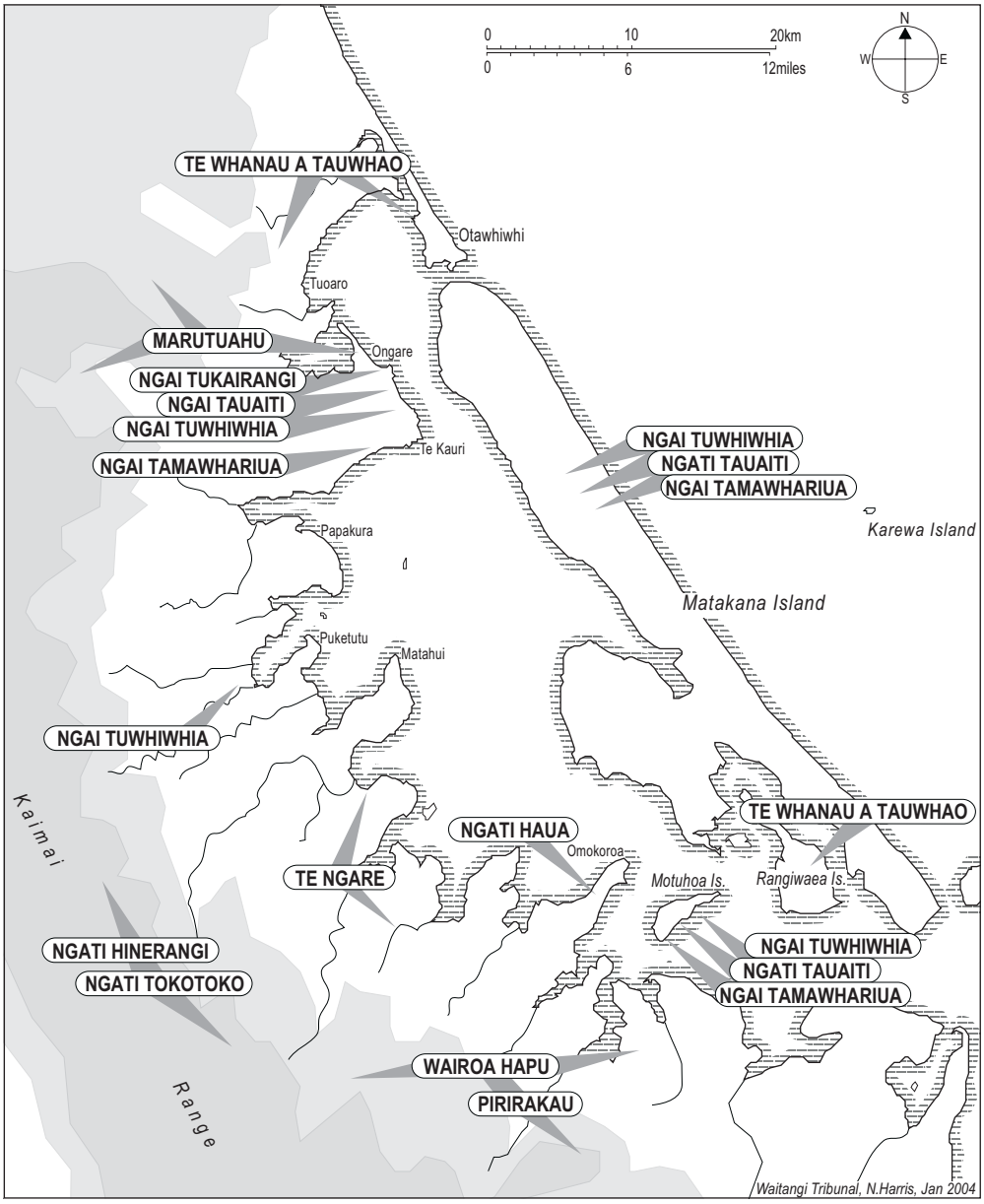
Map 6: Approximate location of some hapu interests – confiscated block

had interests at Otumoetai. The interests of Te Whanau a Tauwhao were located on the islands of Tuhua, Rangiwaea, and Motiti, and on the mainland around Otawhiwhi and Tuapiro, and at Otumoetai. In giving evidence to the Tribunal, claimant Taiawa Kuka noted that Ngati Tauaiti are sometimes known as Ngati Makamaka and are closely related by descent to Ngai Tuwhiwhia and Ngai Tamawhariua – hapu with interests in areas that overlap with Ngati Tauaiti's. Claimant Alan Bennett gave evidence on behalf of Te Whanau a Tauwhao and explained that it is really a confederation of several hapu, including Te Urangawera (who traditionally are associated with Tuhua), Te Ngare (who reside on Rangiwaea), and Te Papaunahi (who were the section of Te Whanau a Tauwhao that occupied Motiti).[44]

Finally, we discuss several neighbouring groups whose predominant areas of interest lie outside our inquiry boundaries: the Marutuahu confederation; Ngati Haua; Ngati Hinerangi and Ngati Tokotoko; Ngati Raukawa; and Ngati Rangiwewehi. Of these groups, only the Marutuahu confederation is a claimant in this inquiry. As we noted in chapter 1, the confederation is made up of four Hauraki iwi. They have claimed as a group, so we are not required to distinguish between the interests of its constituent tribes. The confederation's claims concern the Te Puna–Katikati purchase – it asserts that it has exclusive 'mana whenua' in the Katikati block and shared interests to Ongare and Uretara in the northern part of the Te Puna block, and that it has wahi tapu 'located deep into the Te Puna Block'.[45] We accept that the confederation had interests in the Katikati block and the northern part of the Te Puna block, but we do not believe that its interests excluded other hapu from also having customary rights within any part of those blocks. We consider that the area was a contested zone, an area where the rights of the confederation overlapped with those of Ngai Te Rangi. The extent of each side's rights was in dispute at 1840, and was still disputed in 1864 when the purchase of the Te Puna–Katikati blocks commenced. Moreover, as we have indicated above, we believe that assertions of exclusive interests and clear boundary lines between groups are not consistent with Maori custom. We also endorse the Rekohu Tribunal's concerns about the use of the term 'mana whenua', particularly when it is used to assert that one group has exclusive authority within a particular area.[46] Maori custom was characterised by complex overlapping and intersecting interests, so that, in different circumstances, the interests of one group or another might be more significant. The concept of 'mana whenua' appears to be a nineteenth-century innovation, which confuses the personal or spiritual quality of mana with the distinct issue of rights to land. We discuss this distinction further in the next section, when we describe relationships between Tauranga hapu, and we discuss the rival claims more fully in chapter 7, which deals with the Crown's purchase of the Te Puna–Katikati blocks.

Ngati Haua's lands lay to the west of the Kaimai Range, but the iwi had very close ties with Ngati Ranginui and Ngai Te Rangi. They travelled regularly across the range on the Wairere

44. Document I19, pp 3–4; doc I23, pp 2–3; doc I30, pp 3–4; doc N6, pp 6–7; doc N18, pp 6–8; doc N19, p 5
45. Document N16, pp 20–21
46. Waitangi Tribunal, *Rekohu*, pp 28–29, 260–262



Map 7: Approximate location of some hapu interests – west harbour

track to gather kaimoana at Tauranga. At times, some Ngati Haua also lived in the Tauranga district, particularly at Omokoroa, and their leading rangatira, Te Waharoa, was living on Motuhoa immediately before his death in 1838. Ngati Haua's occupation and use rights in the area were based on their alliance with Tauranga Maori, rather than on any claim to conquest or other rights of their own.[47]

Ngati Hinerangi and Ngati Tokotoko are people of Nga Marama origin with close ties to Pirirakau. Their main area of interest lay in, and just to the west of, the Kaimai Range,

47. Document A2, pp 171–172; doc A13, pp 17–18

especially around Okauia. Their interests did therefore extend into our inquiry district to some extent. In addition, they had occupation rights in the Te Puna area as a result of their links with Pirirakau.[48] Hapu of Ngati Raukawa were in a somewhat similar position, being based primarily on the other side of the Kaimai Range but with interests and some settlements on the Tauranga side. They also had strong connections with the Wairoa hapu, who acknowledge their Ngati Raukawa whakapapa.[49]

Ngati Rangiwewehi of Te Arawa, who lived to the south of our inquiry district, had interests that overlapped with those of Tauranga Maori in the area between Otanewainuku and Oropi–Waoku. In addition, we note that Motiti Island was the subject of a long-running dispute between Ngai Te Rangi and Te Arawa.[50]

2.4.3 Customary interests and claims of Treaty breach

Having set out the territories within which various groups had interests, we now relate these territories to the CMS blocks, the 50,000-acre confiscated block, and the Te Puna–Katikati blocks: three of the key areas within our inquiry district which are the subject of claims of Treaty breach. The nature of the claimed breaches will be discussed later in this report. Our identification of the groups with interests in these areas is based on the core territories provided by the claimants themselves. We reiterate that Maori land interests were not a matter of clearly defined boundaries between groups and that a group could have a particular interest in a place that was some distance from its core territory. In listing various groups below, therefore, we do not suggest that other groups had no rights within the areas mentioned. However, we believe that it will be useful for both the claimants and the Crown for us to give some guidance as to which groups were primarily affected by alleged Treaty breaches involving the three blocks:

- *The CMS blocks*. The principal groups holding interests in the CMS blocks were Ngati Tapu, Ngai Tamarawaho, and Ngai Tukairangi. Ngati He have also asserted an interest in them, and we accept that they appear to have had an interest in the southern part of the blocks at a place called Taiparirua.[51]
- *The confiscated block*. The confiscated block (which encompassed the CMS blocks at Te Papa) included substantial parts of the core territories of Pirirakau, Ngati Rangi, Ngati Pango, Ngati Kahu, Ngati Hangarau, Ngai Tamarawaho, Ngati Tapu, Ngai Te Ahi, and Ngati Ruahine. None of these hapu's rohe was exclusively within the confiscated block, but Ngai Tamarawaho and Ngati Hangarau in particular had very limited interests outside of it. It is likely that Ngati He also lost some land around the eastern boundary of the

48. Document A2, pp 172–173; doc A13, pp 16–17; doc A47, p 23
49. Document A2, pp 172–173; doc A13, p 17; doc K2; doc N14, p 4
50. Document A2, pp 174–175
51. Document J2, pp 15, 41–42; doc J42, p 7; doc J42(a)

block. In addition, the following hapu had interests within the confiscated block around Otumoetai: Ngati Kuku, Ngai Tukairangi, Ngai Tuwhiwhia, Ngati Tapu, and Te Whanau a Tauwhao.

- *The Te Puna–Katikati blocks*. Hapu holding substantial interests within the Te Puna–Katikati blocks were Te Whanau a Tauwhao, Ngai Tuwhiwhia, Ngati Tauaiti, Ngai Tamawhariua, Ngati Pango, Pirirakau, Ngati Pukenga, and hapu of the Marutuahu confederation.

2.5 Relationships between Tauranga Hapu

Relationships between hapu, and between broader tribal groupings, can appear complex to the modern observer. Most hapu in our inquiry area today identify with one of two iwi: Ngai Te Rangi and Ngati Ranginui. However, the nature of these iwi, and of the relationships between them (or, more correctly, between their constituent hapu) has at times been the subject of some oversimplification, which we must correct. In particular, the way in which nineteenth-century Crown officials understood these relationships – tending to regard all Tauranga hapu as 'Ngaiterangi' – was to have important consequences. These will be discussed later in this report.

At this point, we note that Tauranga hapu have important ties to neighbouring iwi. For example, the Wairoa hapu have strong whakapapa links with Ngati Raukawa.[52] Some hapu have particular associations with neighbouring tribes that cut across broader patterns of alliance and enmity. A section of Ngati Pukenga fought with Ngati Maru against Ngai Te Rangi, and Ngati Pukenga fought on both sides of the Ngai Te Rangi–Te Arawa battle at Te Tumu.[53] Generalisations about the enmity between Te Arawa on the one hand, and Ngai Te Rangi, Ngati Ranginui, and their Ngati Haua allies on the other, are also undermined to some extent not only by the longstanding connections of various hapu with Waitaha but also by the links between Ngai Te Ahi, Ngai Tamarawaho, and Ngati Rangiwewehi.[54]

In our inquiry, the following hapu have identified themselves as belonging to Ngai Te Rangi: Nga Potiki, Ngai Tuwhiwhia, Ngati Tauaiti, Ngai Tamawhariua, Te Whanau a Tauwhao, Ngai Tukairangi, Ngati Kuku, and Ngati He. Hapu which have identified themselves as Ngati Ranginui are: Ngai Te Ahi, Ngati Kahu, Ngati Pango, Ngati Rangi, Ngati Hangarau, Pirirakau, Ngai Tamarawaho, and Ngati Ruahine. Ngati Tapu have commonly been considered in the past to belong to Ngai Te Rangi and have been represented on the Ngai Te Rangi iwi authority. They acknowledge their strong connections with both Ngai Te Rangi and Ngati Ranginui, but in this inquiry they have chosen to emphasise their Ngati Ranginui links, as is

52. Document N14, p 4
53. Document M2, pp 18–20
54. Document F14, pp 56–58

their right. Their position, as stated by their counsel in closing submissions, is that Ngati Tapu cannot be clearly characterised as a hapu of either Ngai Te Rangi or Ngati Ranginui to the exclusion of the other.[55]

The situation of Ngati Tapu is a good illustration of the dangers of drawing a rigid distinction between Ngati Ranginui and Ngai Te Rangi. As Puhirake Ihaka of Ngati Tapu suggested, difficulties arise 'if you attempt to translate the contemporary affiliations of hapu and iwi to the events that occurred in the 1860s. In those times the hapu was the main social and political unit and each hapu acted according to its own policies.'[56] This view is consistent with our own understanding, and we follow previous Tribunals in regarding the hapu as the unit exercising corporate functions on a daily basis.[57] It is not surprising, therefore, to find strong ties between hapu which affiliate with different iwi. These ties are based on proximity, ancient whakapapa links, and more recent intermarriage. For example, there are close connections between Ngati He and Nga Potiki (both of whom are Ngai Te Rangi), Ngati Pukenga, and Waitaha, all of whom live in the eastern part of our inquiry area. Similarly, there is a close relationship between the neighbouring hapu Ngai Te Ahi (of Ngati Ranginui) and Ngati He.

The division between Ngati Ranginui and Ngai Te Rangi requires particularly careful consideration. While this division has meaning for claimants today and certainly has some relevance to the nineteenth century, we reiterate that the hapu was the primary corporate unit, with wider iwi identities becoming important mainly in times of war or on other occasions which required the presentation of a united front to outsiders. As Professor Richard Boast argued in his report for Ngai Te Rangi, there is very little evidence of conflict between Ngai Te Rangi and Ngati Ranginui in the nineteenth century before the wars of the 1860s. Rather, he suggested, the impression that comes through in the available evidence is one of an 'interconnected identity' among Tauranga Maori, which includes a common alliance with Ngati Haua and a common enmity with Te Arawa and Marutuahu.[58] We agree with this description in general terms, although we add some qualifications. As noted above, common alliances and enmities were not always clear-cut. Also, while intermarriage between Maori groups at Tauranga Moana meant that those groups were all interrelated, it did not follow that they lost their distinct identities. It was in assuming that such interconnections meant that all Tauranga hapu had been subsumed under the common identity of Ngai Te Rangi (or 'Ngaiterangi', as they spelled it), that Crown officials in the 1860s and afterwards went astray.

In this respect, those officials were typical of Pakeha commentators throughout New Zealand, as historian Angela Ballara has shown. Ballara has argued persuasively that Pakeha

55. Document H12, pp 1–2; doc I24, pp 2–3; doc N3, p 2

56. Document I24, p 3

57. See the following Waitangi Tribunal Reports: *Ngati Awa Raupatu Report*, pp 13, 132–133; *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 1; *Muriwhenua Land Report*, pp 14–15; *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), pp 17–18. See also Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, pp 4–10.

58. Document I12, pp 93–96

tended to simplify Maori social structure, viewing it in terms of a hierarchy in which hapu were seen as 'sub-tribes', which were 'dependent parts' of larger tribes. Thus, officials were inclined to 'deal with large, diverse groups of Maori people as single entities', which they labelled 'tribes'.[59] In addition, Ballara says, Crown officials (and later the Native Land Court) often gave priority to rights based on conquest over those based on ancestral associations.[60]

The civil commissioner at Tauranga, Henry Clarke, set out his understanding of customary rights in the Tauranga district in June 1865, as follows:

> Most of the difficulties in settling the claims in this district will arise from the fact that the Ngaiterangi claim only by conquest. They did not destroy the original inhabitants, but allowed them to remain as cultivators of the soil (not slaves), subject to the conquerors. Some of the principal chiefs took the best of the women as wives, and in some cases, some of the Ngaiterangi women married men of the conquered tribe – the pure Ngaiterangi are now in the minority. The issue of these inter-marriages have, when they have thought it would suit their purpose, ignored their claims through Ngaiterangi, and have fallen back upon the claims derived from the original occupants, this has been the cause of much bloodshed, even down to a very late date, and is now frequently the cause of angry debate.[61]

It is not clear what Clarke was referring to when he described the claims of the original inhabitants as having been the cause of bloodshed 'down to a very late date' – as mentioned above, we are not aware of evidence of significant armed conflict between Ngai Te Rangi and Ngati Ranginui in the nineteenth century.

Two years later, when Clarke was asked to explain the relationship between Pirirakau and Ngai Te Rangi, he began by copying the extract from his June 1865 letter which we have just quoted. He then observed that Pirirakau claimed to be descended from Ngati Ranginui, 'the tribe conquered by the Ngaiterangi', but that their leading men were 'Ngaiterangi really' and that they claimed through Ranginui only in the belief that by doing so 'they will be able to oust all other claimants'. Clarke wrote that Pirirakau had at one time considered themselves subject to the Ngai Te Rangi rangatira Hori Tupaea, requiring his consent before taking any action involving land. He also reported that Ngai Te Rangi did not recognise any Pirirakau claims that were based on their descent from Ranginui.[62]

Clarke's understanding of rights to land at Tauranga relied on the views of 'loyal' Ngai Te Rangi chiefs. It seems that, by the 1860s, tensions had emerged over the extent of Ngai Te Rangi's rights by conquest, and these had become entangled with the divisions over the Kingitanga, which we discuss in our next chapter. In 1860, Tauranga chiefs attending the

59. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 70, 85, ch 6
60. Ibid, pp 80, 90–92
61. Clarke to Mantell, 23 June 1865, AJHR, 1867, A-20, p 12 (doc M9(a))
62. Clarke to Richmond, 25 April 1867, AJHR, 1867, A-20, p 59 (doc M9(a))

Kohimarama conference to demonstrate their loyalty to the Crown (also discussed in chapter 3) included the following remarks in a message to the Governor:

> Our land at Tauranga was owned formerly by a different people – by Ranginui. Our ancestors made war upon them and took the land. It was inherited by their children, and has thus descended to us. Now the descendants of the conquered tribe, who are related to us through inter-marriage, insist upon having it back. This is not right, inasmuch as we were the conquerors and our *mana* over this land has never been lost.[63]

This was the position adhered to by 'loyal' Ngai Te Rangi chiefs when conflict broke out over the confiscated block and the Te Puna–Katikati purchase after 1864. They dismissed Pirirakau and others of Ngati Ranginui as 'slaves' with only very limited and subordinate rights to land (see chs 7, 9).

However, Crown officials should not simply have accepted such assertions by one group of Maori about the rights of others. There was another viewpoint, which was put forcefully in 1866 by Rawiri Tata of Pirirakau. Tata denied that Ngai Te Rangi had any rights over his land; pointing to the ground, he said 'Hori Tupaea has no right to that'. Then, placing his hand on his forehead, he said 'Hori Tupaea has a right to this'.[64] Tata was explaining that, although he acknowledged Tupaea's political authority and mana, this did not give him (or anyone else) the right to control or dispose of the land of Tata's hapu.

The Ngai Te Rangi conquest did not affect the rights of Ngati Ranginui hapu within the areas where they continued to live, use resources, and exercise control following that 'conquest'. In our previous section, we outlined the areas where we consider the hapu of Ngati Ranginui continued to exercise their rangatiratanga. The situation in Tauranga described by Clarke, where the conquerors had intermarried extensively with the earlier inhabitants, is typical of the way in which conquerors acquired rights in Maori society. As the Rekohu Tribunal explained, conquest alone was not considered to provide secure title. Unless the earlier inhabitants were either exterminated or expelled from the district altogether, they could continue to possess ancestral rights. Meanwhile, the conquerors could acquire rights by marrying or incorporating the conquered people (so that the children would inherit a strong ancestral right to the land) or by 'maintaining control and burying their dead on the land over some generations'.[65] Secure title required further legitimisation by the passage of time.

By the nineteenth century, hapu of Ngai Te Rangi had acquired rights both by intermarriage and by long association with the Tauranga Moana area. At the same time, the hapu of Ngati Ranginui remained on the land, not as slaves but as people with their ancestral rights and their mana intact. It was perfectly legitimate, in terms of tikanga Maori, for them to continue to claim on the basis of their Ranginui ancestry, despite their intermarriage with

63. Tomika Te Mutu and others to Governor Browne, 16 July 1860, MA23/10 (RDB, vol 88, p 33,940)
64. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 28 (doc M9(a))
65. Waitangi Tribunal, *Rekohu*, pp 138–144

Ngai Te Rangi. In acknowledging the political authority of a Ngai Te Rangi chief such as Tupaea, they were recognising that rangatira's personal mana and leadership qualities. They were not placing themselves in a subordinate position to Ngai Te Rangi, nor were they identifying themselves as part of Ngai Te Rangi. In our view, all of the hapu of Ngati Ranginui and Ngai Te Rangi, together with Ngati Pukenga and Waitaha, have long ancestral associations with our inquiry area, and are tangata whenua of Tauranga Moana.

In this report, we will therefore use the term 'Ngai Te Rangi' with care. When spelt as one word with quotation marks, 'Ngaiterangi' refers to the frequently stated position of Crown officials that all Tauranga hapu were 'Ngaiterangi really'. 'Ngaiterangi' is used in this report to refer to Tauranga Maori in the generic sense, as used by Crown officials in the nineteenth century. When spelt as three words without quotation marks (ie, Ngai Te Rangi), the term refers to those hapu outlined above that trace their primary descent from the ancestor Te Rangihouhiri and are of the Mataatua waka. The generalised use of the name 'Ngaiterangi' was undoubtedly inaccurate, and offensive to those who did not identify at all with the iwi Ngai Te Rangi.[66] However, for the Tribunal, the more important point is that, in light of the Treaty principle of equal treatment outlined in chapter 1, the Crown was obliged to treat all Tauranga hapu equally, regardless of what iwi labels they gave to them.

2.6 Chapter Summary

The main points in this chapter are as follows:

- Prior to 1840, several iwi were established at Tauranga following various migrations to the area over the preceding centuries. The principal iwi of the area were Ngati Ranginui, Ngai Te Rangi, Ngati Pukenga, and the Waitaha section of Te Arawa. Several other tribal groupings, including those of the Marutuahu confederation, had customary interests in parts of our inquiry district.
- The hapu was the primary social unit for Tauranga Maori in the pre-1865 period, and the hapu that made up the iwi of Tauranga had overlapping customary interests in the district. The political relationships between the hapu of the various iwi were also intricate and multifaceted. Throughout the nineteenth century, Crown officials often referred to all Tauranga Maori as 'Ngaiterangi' and, at times, claimed that Ngati Ranginui had been subsumed into Ngai Te Rangi. This was not in fact the case, and the various hapu of Ngati Ranginui maintained an identity distinct from Ngai Te Rangi, as did various other hapu with interests in the Tauranga district.

66. As one Ngai Tamarawaho claimant witness put it (doc F23, p 9): 'Ngai Tamarawaho lost its identity as a result of the raupatu . . . . It stripped us of our *mana*, and laid bare a once proud people. Then we were written out of existence by the naming of all the Tauranga tribes as Ngai te Rangi. I grew up as a Ngati Ranginui girl and certainly not a Ngai te Rangi girl.'

2.6

- During the period frequently referred to as the 'musket wars', Tauranga Maori fought various battles against Te Arawa, Marutuahu, and Nga Puhi. These battles impacted on Tauranga Maori in substantial ways. For the purposes of this report, the principal outcome of the war was that a strong alliance developed between Tauranga Maori and Ngati Haua of Tainui.

CHAPTER 3

TAURANGA MAORI AND THE CROWN, 1840–64

3.1 Introduction

This chapter provides a linking narrative of the developing relationship between Tauranga Maori and the Crown between the signing of the Treaty of Waitangi in 1840 and the beginning of the Tauranga war in 1864. We relate events in the region to broader developments in the colony, particularly the gathering conflict between the Crown and Maori over land, which erupted into war at Waitara in 1860, and over the Kingitanga, which led to the invasion of the Waikato by British troops in 1863. We discuss these events to provide the necessary context for an accurate understanding of the Tauranga raupatu.

After briefly describing the arrival of Pakeha in the Tauranga district, we discuss the signing of the Treaty there. Next, we comment briefly on the involvement of Tauranga Maori in the emerging colonial economy and at greater length on the main issue of relevance for us: the extent of the Crown's presence in Tauranga before the wars of the 1860s and the degree to which English civil or criminal law was applied to Maori. For some time, it was not at all clear how far the Crown could go, in practice, in applying English law to Maori *inter se*, or to matters between Maori and Pakeha, though the Crown did try on occasions to apply the law in both circumstances. Some of these attempts are examined in Professor Alan Ward's pioneering 1973 study *A Show of Justice*,[1] and we look at two examples that relate to Tauranga, both concerning fights in 1842 between Tauranga Maori and their long-standing enemies: Ngati Tamatera in the west and Ngati Whakaue in the east.

Finally, we examine another facet of the relationship between the Crown and Tauranga Maori: the involvement of the latter in the Kingitanga and the Taranaki and Waikato wars. The question here is whether the adherence of Tauranga Maori to the Kingitanga was a proper exercise of their rangatiratanga or, as the Crown maintained at the time, a breach of their loyalty to the British Queen. In our next chapter, when we describe how, after the Waikato war, the Queen's troops fought Tauranga Maori at Pukehinahina and Te Ranga, that question will be of crucial importance.

1. See Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), esp pp 42–60

3.2 The Arrival of Pakeha in Tauranga

In November 1769, on his first Pacific voyage, Captain James Cook sailed his ship, the *Endeavour*, past Tauranga. He described the coastal area as being full of plantations and observed a number of fortified villages on promontories.[2] It would be 50 years before the next European visitor arrived, and by then the introduction of guns, pigs, and potatoes would have already begun to transform the lives of Tauranga Maori. The devastating warfare that followed the introduction of firearms was dealt with in the previous chapter; here, we discuss the changes brought about by the arrival of missionaries and traders.

3.2.1 Missionaries

When the Reverend Samuel Marsden visited Tauranga in 1820, he found that, despite having had no previous onshore contact with Pakeha, local Maori had already acquired pigs and potatoes, two important food items introduced by the Europeans. There were several further visits to Tauranga by missionaries from the Church Missionary Society (CMS) between 1826 and 1834. The missionaries found three major pa at Otumoetai, Te Papa, and Maungatapu. They reported that Maori were keen to have missionaries settle among them, and in 1835 a mission station was established at Otamataha, on the tip of the Te Papa Peninsula. Previously, an important pa had existed at Otamataha, but it had been destroyed with great loss of life during a Ngati Maru raid in 1828. Consequently, the site was considered tapu and was no longer occupied. The willingness of Tauranga Maori to see the missionaries settle at Otamataha may have been due in part to a belief that the missionaries would help to protect the site. It is also likely that they hoped that the missionary presence would attract trade and deter attacks by their enemies. From the missionaries' point of view, Te Papa was ideally located on good flat land between the two most populous pa, Otumoetai and Maungatapu. The outbreak of warfare with Te Arawa in 1836 forced the CMS to abandon the mission station, but in January 1838 Alfred Brown arrived at Te Papa as the new resident missionary, and he quickly set about trying to negotiate the purchase of the land occupied by the mission.[3] (The CMS's acquisition of what we refer to as 'the CMS blocks' in 1838, the Crown's investigation of the transactions in 1842, and the transfer of the blocks to the Crown in 1867 are discussed in chapter 8.)

Brown had some notable early successes in his efforts to convert Maori to Christianity, one of them being his conversion of the renowned tohunga Tahu (one of the signatories to the deeds conveying the CMS blocks), who became a mission teacher.[4] Even more significant for the future of Tauranga was the conversion of the young Ngati Haua rangatira Tarapipipi, son of the famous warrior chief Te Waharoa.[5] Tarapipipi, who took the name Wiremu Tamihana

2. Document D7, p 21
3. Document A29, pp 5–12; doc J2, pp 36–39
4. 'Matiu Parakatone Tahu', DNZB, vol 1, pp 414–415
5. 'Wiremu Tamihana Tarapipipi Te Waharoa', DNZB, vol 1, p 515–516

(William Thompson) at his baptism in June 1839, was to play an important role in the events which are the focus of this report. It was not long, however, before Brown faced competition from those he derisively referred to as 'papists'. Roman Catholic bishop Jean Baptiste Pompallier visited Tauranga in March 1840, and two months later a permanent Catholic mission station was established at Tauranga.[6] The Catholic church would also have some success in converting Tauranga Maori, and to this day Catholicism has continued to be influential in some Tauranga hapu.

3.2.2 Traders

During their 1826 visit, the CMS missionaries became the first Pakeha to engage in trade with Tauranga Maori; they found that the local Maori had an abundance of pigs and potatoes, which they were eager to trade.[7] By the late 1820s, groups of Te Arawa and Ngai Te Rangi were scraping flax for visiting European traders, and in 1830 Phillip Tapsell settled at Maketu, where he acted as the flax agent for a Sydney trading company.[8] According to Richard Boast, who gave evidence for Ngai Te Rangi, Tapsell was taken to Maketu by Hori Tupaea of Te Whanau a Tauwhao and several Ngati Whakaue chiefs.[9] The land on which Tapsell established his trading station was purchased from Ngai Te Rangi, but before long Maketu developed into a large Te Arawa community. Ngai Te Rangi responded by enlarging their nearby pa at Te Tumu. Before long, both communities became involved in scraping flax to trade for muskets, powder, and other European goods. As we related in section 2.3, the area around Maketu became the site of warfare between Te Arawa and Ngai Te Rangi in the later 1830s.[10]

In the early 1830s, several Pakeha traders also established themselves at Otumoetai, Te Puna, and Te Papa, and Maori engaged in trading pigs, potatoes, and dressed flax for muskets, powder, blankets, tobacco, and other goods. Three Frenchmen, Louis Bidois, Emile Borell, and Pierre Potier, who all married Pirirakau women, were based at the mouth of the Wairoa River. Another early trader who took a local wife was John Faulkner; he married Ruawahine of Ngai Tukairangi and established a trading station at Otumoetai. Such marriages were a necessary means for Pakeha to gain acceptance by local Maori. By the end of the 1830s, though the flax trade was in decline, Tauranga Maori were still actively trading pigs and potatoes.[11] Gilbert Mair senior, the captain of the CMS vessel the *Herald*, described Tauranga in 1839 as:

6. Document J2, pp 42–43; Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 50–51
7. Document J2, pp 56–57
8. Stokes, *A History of Tauranga County*, p 53
9. Document I12, pp 53–54
10. Document A2, p 7
11. Stokes, *A History of Tauranga County*, pp 58–59; doc A47, p 37; doc J2, pp 58–60; 'John Lees Faulkner'; 'Ruawahine Irihapeti Faulkner', DNZB, vol 1, pp 118–119

> A very fine country, with much level land about the sea coast, the soil being very fertile. Potatoes and Corn are to be found in great abundance. More Flax has been dressed [here] than at any other place on the coast, and I have known near 150 tons to be procured in the course of one year. It has become a famous place for curing pork.[12]

Despite the brisk trade in goods, few attempts were made to buy Maori land before 1840. Apart from the two CMS transactions at Te Papa, only seven claims relating to pre-Treaty land transactions in the Tauranga area were submitted to the Land Claims Commission.[13] Of these, three involved land allegedly acquired by Pakeha men through marriage to Maori women, while four involved other alleged purchases or gifts. One claim for half an acre was eventually recognised by a Crown grant, while a claim on behalf of Faulkner's family was settled by the commissioner of Tauranga lands.[14]

3.3 Kawanatanga and Rangatiratanga at Tauranga, 1840–64

In this section, we examine the application of kawanatanga, or governance, to Tauranga Maori. We begin with a brief outline of the coming of the Treaty of Waitangi to Tauranga and its consequences for local Maori. Then, we discuss economic developments and social conditions, with a brief note on Crown involvement in commercial activity at Tauranga. Finally, we consider the extent to which the Crown's kawanatanga authority was applied at Tauranga in practice in the period 1840 to 1864.

3.3.1 The Treaty of Waitangi in Tauranga

Captain William Hobson arrived in New Zealand on 29 January 1840, bearing instructions from the British Government to negotiate for the cession of sovereignty by Maori to the Crown. Hobson set out to achieve this goal by means of a treaty. This treaty was drafted soon after Hobson landed in New Zealand and, on 6 February, just nine days after his arrival, he secured the signatures of 45 chiefs to it at Waitangi. He then obtained more than 56 signatures at Hokianga on 12 February. This success persuaded him to seek the cession of the whole of New Zealand.

On 1 March 1840, Hobson suffered a stroke and partial paralysis, from which he did not recover sufficiently to continue the negotiations with Maori himself. Instead, he had copies of

12. Gilbert Mair senior, captain of the CMS vessel *Herald*, 1838, MS-papers-2025, ATL (doc M9, p 36)

13. The Land Claims Commission was established in 1840 to investigate pre-1840 land purchases and make recommendations to the Governor that Crown grants be issued in favour of purchasers who had legitimately acquired land from Maori: see sec 8.3.

14. Document A13, pp 19, 28–31

the Treaty sent around the country with military officials and missionaries so that further Maori signatures could be gathered. Two copies were taken to Tauranga. The first was sent to Alfred Brown, the resident CMS missionary. On 1 April, Brown noted in his diary that he had 'Received communications from His Excellency the Lieut-Governor wishing me to procure signatures of any leading Chiefs in this neighbourhood to the treaty which had been signed at Waitangi'. But Brown does not appear to have regarded the task as being one of momentous importance, merely noting on 10 April that he 'gave up the day to procuring signatures of the Natives to the Government treaty'.[15] Brown had been reluctant to broach the Treaty with the chiefs in view of recent intertribal fighting in the district.[16] Altogether, Brown gathered 21 signatures, though it is not clear whether he obtained all of them on 10 April. Seventeen of the signatures were witnessed by CMS staff members Hoani Aneta, Henry Taylor, and James Stack, while the other four, including that of Aneta, were witnessed by Stack alone, which suggests that these were a later addition. Among the signatories were several important rangatira: the principal Ngati He chief at Maungatapu, Taipiri; the Ngai Te Rangi chief Te Whanake; and the Ngati Pukenga rangatira Te Kou. But the prominent Te Whanau a Tauwhao rangatira Tupaea withheld his signature. The full list of signatories was: Hoani Aneta, Huitao, Kapa, Nuka (Taipiri), Pikitia, Putarahi, Reko, Tamaiwhawhia, Tanarumia, Tari, Te Haereroa, Te Hui, Te Konikoni, Te Kou, Te Mako, Te Matatahuna, Te Paetui, Te Peika, Te Pohoi, Te Tutahi, and Te Whanake.[17] According to Dr Claudia Orange, Brown did not immediately send the signed copy of the Treaty back to Hobson because he hoped that Tupaea and some others would eventually sign it.[18]

Hobson was especially anxious to secure the signatures of Tauranga chiefs in view of the previous fighting in the district. A second copy of the Treaty was taken to Tauranga by Major Thomas Bunbury on 11 May 1840. To his surprise, Bunbury found that Brown had already collected signatures, though he was keen to add those of Tupaea and other Otumoetai chiefs. Bunbury met the chiefs at Te Papa the day after his arrival and, with Edward Williams reading the Treaty and interpreting the discussion, urged them to sign so that regular government could be established and the growing number of Pakeha in the country controlled. But the chiefs were not persuaded, since they could not see how, if they ceased fighting, the Government could protect them. Moreover, Bunbury had not brought the blankets that were usually distributed to those who signed the Treaty. Such impediments might have been overcome had Bunbury, impatient with the 'dilatory habits' of the Maori, given them adequate time for discussion. But he was unwilling to wait, and so he left for Maungatapu Pa without having

15. The Elms Trust, ed, *The Journals of A N Brown: CMS Missionary Tauranga, Covering the Years 1840–1842* (Tauranga: The Elms Trust, 1990), p 12

16. Claudia Orange, *The Treaty of Waitangi*, 2nd ed (Wellington: Bridget Williams Books Ltd, 1995), p 70

17. Claudia Orange, for The Ministry for Culture and Heritage in Wellington, *Tauranga Treaty Copy*, undated (http://www.nzhistory.net.nz/gallery/treaty-sigs/tauranga.htm, downloaded 16 November 2003)

18. Orange, *The Treaty of Waitangi*, pp 70–71

obtained any more signatures. Bunbury did not stay long at Maungatapu either – having been assured by the chiefs that the important men had already signed the Treaty, he left hurriedly, declining an invitation to dine.[19]

In subsequent years, the refusal of Tupaea and other Tauranga chiefs to sign the Treaty was used by them as a justification not to accept the Queen's sovereignty. As we note below, this argument was used by the Marutuahu chief Taraia in 1842, when he denied that the Governor could intervene in his conflict with Ngai Te Rangi. However, Maori accession to the Treaty was only one of the means whereby Britain gained sovereignty over New Zealand (albeit an important means). Hobson used the accession of the many chiefs who had signed the Treaty as the reason for his declaration of sovereignty over the North Island on 21 May 1840. But, having not received the copies of the Treaty bearing the signatures of South Island chiefs by that date, he declared British sovereignty over that island by virtue of Cook's discovery. The publication of Hobson's proclamation in the *London Gazette* on 2 October 1840 completed the process of British acquisition of sovereignty over New Zealand.[20] By that time, some 530 chiefs had signed either the Maori or the English text of the Treaty, making it one of the most thoroughly signed treaties between indigenous people and a European government in history. Though important chiefs such as Taraia, Tupaea, and most of the Arawa chiefs had not signed the Treaty, once British sovereignty was proclaimed over New Zealand they became British subjects, bound in law by the sovereignty of the Crown, whether or not they liked it and whether or not they understood its full legal purport. The obverse of this, of course, is that all chiefs, whether or not they signed the Treaty, were entitled to what the Treaty, in both of its texts, promised them.

This long-accepted legal view was reiterated by the Rekohu Tribunal, as follows:

> the Colonial Office took the view that the Treaty applied to all, whether they had signed it or not. The Treaty was primarily an honourable pledge on the part of the British to the people of such lands as might in fact be acquired or annexed. The consensual nature of its drafting, and to a large extent its completion, does not prevent its application as a unilateral undertaking where required, as much binding upon the honour of the Crown as a Treaty to which there was full consent. There appear to have been significant North Island rangatira who did not sign, and no signatories for the greater part of the South Island when sovereignty over that area was proclaimed, and yet the Treaty must be taken to have applied in all places when sovereignty was assumed.[21]

19. Orange, *The Treaty of Waitangi*, pp 73–75
20. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), pp 162–163
21. Waitangi Tribunal, *Rehoku: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 30

3.3.2 Economic and social developments at Tauranga, 1840–64

Until war broke out in 1864, Tauranga was an outpost of a fledgling colonial economy centred on Auckland. Though the Anglican and Catholic missions at Tauranga encouraged Maori agriculture, and Pakeha already resident in Tauranga helped to facilitate trade, the initiative lay mainly with Tauranga Maori themselves. There was disagreement between Crown and claimant witnesses before this Tribunal over the degree to which Tauranga Maori participated in the new economy of the Pakeha and the benefits they derived from it before 1864.[22] But, because of a lack of data from so early in the colony's history, we are unable to come to firm conclusions on such matters. Nevertheless, the available information suggests that Tauranga Maori did attempt to take advantage of new trade and agricultural opportunities as they became available.

Edward Shortland estimated that in 1843 Tauranga Maori cultivated four acres of wheat, 500 acres of maize, 1800 acres of potatoes, and 600 acres of kumara.[23] As the Auckland market developed, Tauranga Maori, in common with Maori elsewhere, increased their production of grains, vegetables, and fruits. Initially, the produce was sold to new colonists not yet able to grow their own, but in the decade from 1849 most was exported to the Californian or Victorian goldfields. Maori trade with Auckland was widely alluded to, albeit not fully quantified, in returns published in early newspapers, in Auckland Provincial Council records, and in books such as William Swainson's *Auckland, the Capital of New Zealand*. Swainson recorded that in 1852:

> one thousand seven hundred and ninety-two canoes entered the harbour of Auckland, bringing to market by this means alone two hundred tons of potatoes, fourteen hundred baskets of onions, seventeen hundred baskets of maize, twelve hundred baskets of peaches, twelve hundred tons of firewood, forty-five tons of fish, and thirteen hundred pigs; besides flax, poultry, vegetables, &c. They are the owners also of numerous small coasting craft – many of them purchased at a cost of upwards of two hundred pounds each; also numerous flour mills, worked by water power.[24]

Swainson did not specify the contribution of Tauranga Maori, though Cooper's 1857 *Settlers' Guide* stated that they owned 'numerous coasting vessels' and supplied Auckland with perhaps 'more wheat, potatoes, India corn, onions, etc than any other part of New Zealand'.[25] Wheat was probably the most important cash crop of the late 1850s and early 1860s, and Governor George Grey claimed that, in the year before the Tauranga wars, Maori

22. See doc J2, pp 59–62; doc M9, pp 33–56; doc N7, pp 11–13; doc N17, p 7; doc N15, pp 4–5; doc P15, pp 39–40
23. Shortland to Clarke, letter and enclosed return, 13 July 1844, MS-86AA, Hamilton Public Library (doc M9, p 40)
24. William Swainson, *Auckland, the Capital of New Zealand and the Country Adjacent: Including Some Account of the Gold Discovery in New Zealand* (Auckland: J Williamson, 1853), p 142
25. Isaac R Cooper, *The New Zealand Settler's Guide* (London: E Stanford, 1857) (as quoted in Stokes, *A History of Tauranga County*, p 65)

in the district had harvested and sold 100,000 bushels of it.[26] This lends support to Cooper's view that Tauranga Maori were amongst Auckland's leading suppliers of produce.

In contrast to such contemporary assessments, Dr John Battersby, in evidence presented on behalf of the Crown, argued that 'Tauranga was only a small contributor to colonial trade in the 20 years before 1860' and there was accordingly little trade to disrupt when the war and confiscation came to the region.[27] In support of this argument, Battersby pointed to, for example, the relatively infrequent record of ships from Tauranga entering the port of Auckland.[28] However, the figures of ship arrivals in Auckland that he used are not a complete record of all ship visits to Auckland in the period and do not account for all types of vessels used by Maori.[29] As with other commercial or social developments of the period before 1864, the evidence presented to this Tribunal on Tauranga Maori participation in coastal shipping and trade is not comprehensive enough to allow us to come to any firm conclusions.

Though Tauranga Maori, like Maori in other districts, were eager to take up new agricultural and commercial opportunities, this enthusiasm did not necessarily bring about an improvement in Maori living conditions. For instance, we can be reasonably sure that the Maori population of Tauranga was dropping throughout the period. After 1842, this decrease was due to imported infectious diseases rather than warfare. We lack reliable statistics, but estimates suggest that the population of Tauranga Maori was declining steadily, as was the national Maori population. A visiting missionary, James Hamlin, estimated that there were 700 fighting men at Tauranga in 1840, which, if correct, would have put the total population at about 2000. By the late 1850s, a British naval officer, Commander Drury, and an Austrian scientist, Christian Hochstetter, each estimated a total Maori population of between 800 and 1000. In 1862, William Colenso stated definitively that the Maori population of Tauranga was 957.[30]

Finally, we note there was little, if any, Crown involvement in Maori agriculture and commerce at Tauranga during this period, as was to be expected in the early years of the colony. Though Governor Grey, in particular, attempted to encourage Maori economic development, the practical aid that he did provide was limited.[31] But if the Crown did little to assist Tauranga Maori to become involved in the colonial economy, it did not, at this stage, do anything to disadvantage them. In particular, it did not target their land for European settlement. (At that time, Crown purchasing was concentrated largely in the vicinity of Auckland, the New Zealand Company settlements on both sides of Cook Strait, and in the pastoral districts of Otago, Canterbury, the Wairarapa, and Hawke's Bay.) In Tauranga, the Crown dealt with pre-1840 land claims such as those of the CMS (discussed in chapter 8), but it did not purchase

26. Document A38, p 7
27. Document M9, pp 55–56
28. Ibid, pp 33–56
29. Cross-examination of Battersby, fourteenth hearing, 15 October 2001, tape 1, side B
30. Stokes, *A History of Tauranga County*, p 70
31. Document M9, pp 54–55

any land before 1864. Nevertheless, by the 1850s Tauranga Maori were aware of the pressures being exerted on other Maori to sell land, particularly those in Taranaki and the Waikato.[32]

3.3.3 Kawanatanga in Tauranga

(1) Introduction

As Alan Ward noted in *A Show of Justice*, during the negotiation of the Treaty the extent to which kawanatanga would impinge on rangatiratanga was not fully discussed, though the British 'still had ill-formed intentions of using chieftainship, transformed by Christian education . . . as the pivot of local administration in the land'.[33] This was the British colonial policy known as 'indirect rule', which relied on local princes in much of imperial India and paramount chiefs in Britain's African colonies (and even in late-nineteenth-century Fiji) to apply customary rather than English law to local peoples. Vestiges of that policy were haphazardly applied in New Zealand, where Governors and Ministers relied on chiefly 'allies' for advice and assistance. The New Zealand chiefs were not formally incorporated into the structure of government, except at the bottom tier of administration as assessors, or as assistants to colonial officials or judges.

At Waitangi in 1840, various promises were made to respect Maori law and custom, shorn of such excesses as warfare, cannibalism, and infanticide. Following a request from Bishop Pompallier, Hobson agreed to announce that all religions would be respected. At the suggestion of William Colenso, he added that his promise would extend to Maori ritenga (custom). Hobson also sought to counter suggestions that Maori authority would be degraded by the advent of British authority, and he issued a circular telling the chiefs that 'the Governor will ever strive to assure unto you the customs and all the possessions belonging to the Maoris'.[34] When George Clarke senior was appointed chief protector of aborigines later in 1840, he was instructed to assure Maori that 'their customs would not be infringed, except in cases that are opposed to the principles of humanity and morals'.[35] These official pronouncements show that Maori generally, and especially those in areas such as Tauranga where there was virtually no civil administration, were not expected to modify their customary law to conform with English civil and criminal law.

Clarke's appointment was the first step in the development of a native administration in New Zealand. Several sub-protectors were appointed to assist him, and they were posted to outlying districts with the authority to deal with petty cases of crime or conflict according to 'native usage'. Edward Shortland was appointed sub-protector of aborigines for the

32. For example, the 'loyal' chief Rawiri Puhirake reportedly stated to Thomas Smith in 1861 'Let the Government be cautious; if land is bought there will be trouble': Smith, 'First Report', 26 December 1861, AJHR, 1862, E-9, sec 4, p 5.

33. Ward, p 44

34. Hobson to New Zealand chiefs, 27 April 1840 (as quoted in Ward, p 45)

35. Clarke, 1840, BPP, 1844, app, p 349 (as quoted in Ward, p 45)

eastern district, including Tauranga, and he was also made a police magistrate. He set up his headquarters at Maketu in October 1842 but was sent to the South Island to investigate land claims in July 1843 and did not return until February 1844. Shortland left Maketu for good in April 1845, but not before being involved in a hearing into the validity of the CMS purchases at Te Papa (see ch 8). He was not replaced.[36]

(2) The Ongare incident

Soon after arriving at Maketu in 1842, Shortland was involved in attempts to resolve a conflict which had erupted between Ngai Te Rangi and the Marutuahu confederation over land at Ongare. This headland in the harbour in the western part of the Tauranga Moana district was on the frontier between the two groups. In our last chapter, we briefly described conflicts between the two sides during the 'musket wars', which left the coastal area between Whitianga and Katikati almost deserted by the 1830s. Towards the end of the decade, there was some reoccupation, particularly of Ongare, under the leadership of the Ngai Te Rangi chief Te Whanake, and Paetui, who appears to have had links with both sides.

According to the Ngati Tamatera rangatira Taraia Ngakuti Te Tumuhuia, Te Whanake's occupation was approved by Marutuahu on the condition that Te Whanake would only grow crops there. However, Te Whanake built a pa and desecrated urupa where some of Taraia's relatives were buried.[37] When Taraia heard of Te Whanake's actions , he led a war party to Ongare and, on the night of 22 May 1842, attacked Te Whanake's kainga. Seven people were killed (two of whom were eaten[38]) and about a dozen others were taken as slaves. Alfred Brown described the victims as professed Christians and part of his congregation.[39] Te Whanake and Paetui had signed Brown's copy of the Treaty but Taraia had refused, and he roundly dismissed the Crown's right to intervene in his dispute with Ngai Te Rangi. In Taraia's opinion, the Ongare attack was a matter of utu – it was payment for violence against his ancestors by Ngai Te Rangi. Tauranga Maori were apparently keen to seek utu of their own but Brown dissuaded them from doing this. Instead, they wrote to Clarke requesting that he come to Tauranga and inquire into the incident.[40]

Clarke met Taraia in June and was told that the incident was between him and Ngai Te Rangi and had nothing to do with the Governor.[41] Following this, the Executive Council met and considered using force to apprehend Taraia and release the prisoners. But Hobson had only 40 troops available and this was considered insufficient for the task. Clarke determined

36. 'Edward Shortland', DNZB, vol 1, pp 395–396
37. Taimoana Turoa, *Te Takoto o te Whenua o Hauraki*, edited by Te Ahukorami Charles Royal (Auckland: Reed Publishing, 2000), p 237 (doc M10, pp 12–13); doc M10, pp 12–13; doc M14, pp 2–3
38. Document M10, p 12; Evelyn Stokes, *Whanau A Tauwhao: A History of a Ngai Terangi Hapu*, University of Waikato Centre for Maori Studies and Research, occasional paper 8 (October 1980), p 43
39. Document M10, pp 14–15
40. Document M9, p 1
41. Ibid, p 2

to try mediation once more. On 8 July 1842, he and the Colonial Secretary, Willoughby Shortland, met with Taraia, who again reiterated that his fight with Tauranga Maori need not concern the Governor. He emphasised that he had not signed the Treaty of Waitangi and that the Governor had no authority over him.[42] After their meeting with Taraia, Clarke and Shortland moved on to Tauranga to meet with the local chiefs there.

While Shortland and Clarke were in the Tauranga Moana district, they proposed that the Crown should purchase the disputed area at Katikati in order to create a buffer zone between Ngati Tamatera and Ngai Te Rangi. Although this proposal gained the support of both Taraia and some of the Christian chiefs at Tauranga, other leading Tauranga chiefs, including Hori Tupaea, at first refused to sell any land.[43] In the meantime, the Tauranga chiefs agreed to leave the disputed area between Hauraki and Tauranga unoccupied.[44] Edward Shortland, who took up his position as sub-protector in October 1842, continued to negotiate for the settlement of the dispute. He found much support, but not universal approval, for the idea of placing Europeans on the land at Katikati.[45] Willoughby Shortland, by then the acting Governor, called at Tauranga again in December, apparently to continue negotiating the purchase of land. But he was unable to do so because of fighting between Te Arawa and Tauranga Maori.[46] After this date, we have no evidence of any further attempt by the Crown to purchase the land. We agree with the opinions of Professor Alan Ward and Vincent O'Malley in their Crown–Congress Joint Working Party paper that the Crown's proposal was probably a ploy on the part of Clarke, who saw it as 'a temporary expedient to ease inflamed tensions'.[47] Indeed, the immediate outcome was a fragile – although lasting – peace between Hauraki and Tauranga Maori.

Taraia's resistance to intervention by the Crown at Ongare therefore constituted a serious challenge to the effectiveness of the Crown's rule. Rather than seek redress through traditional means, Ngai Te Rangi and other Tauranga tribes agreed to leave the matter in the hands of the Governor, but they were left with a sense of injustice when the Crown failed to punish Taraia at all.

(3) Crown involvement in disputes with Te Arawa

The disputes with Marutuahu were further complicated when Ngai Te Rangi and Ngati Whakaue (of Te Arawa) came to blows at Maketu and Tuhua late in 1842. After the alleged killing by Tauranga Maori of the son of Arawa chief Tangaroa, some Ngai Te Rangi at Tuhua were

42. Ibid, p 5
43. C H Wake, 'George Clarke and the Government of the Maoris: 1840–1845', in *Historical Studies, Australia and New Zealand*, vol x, no 39, November 1962, p 349; Ian Wards, *The Shadow of the Land: A Study of British policy and Racial Conflict in New Zealand, 1832–1852* (Wellington: Department of Internal Affairs, 1968), pp 60–62; doc M9, pp 5–6
44. Document M9, p 7
45. Ibid, pp 11–12
46. Ibid, p 13
47. Document A13, p 37

attacked by a force led by Tangaroa and several were killed and eaten.[48] When Willoughby Shortland arrived at Tauranga in December 1842, he immediately requested that all available British armed forces be sent to Tauranga to prevent further fighting between Ngai Te Rangi and Ngati Whakaue.[49] Troops under the command of Major Bunbury arrived on 18 December.[50] Despite considerable tension at Maketu and Tauranga after the arrival of the British troops, further fighting between Te Arawa and Ngai Te Rangi was avoided and the soldiers did not become directly involved in the conflict. When tensions eased, the troops were withdrawn. In the nine months he spent at Maketu as sub-protector, Edward Shortland mediated between the two sides, but it was the chiefs themselves who eventually made peace in 1845. According to Boast, the peacemaking was recorded on stone markers located at Maketu and Tauranga. The peacemaking also covered rival claims to Motiti Island; although a dispute arose there in 1852, it did not lead to fighting.[51]

The conflict between Ngai Te Rangi and Ngati Whakaue provoked anguished discussion among Crown officials, who were well aware of their responsibilities to prevent bloodshed but acutely conscious of their inability, for lack of military support, to do much about it. Attorney-General William Swainson argued (with some support from Clarke) that chiefs who had not signed the Treaty (such as Taraia, Tupaea, and the Te Arawa chiefs) retained their sovereign independence, were not British subjects, and were not subject to English law. Willoughby Shortland responded by arguing that, since the whole of New Zealand was British territory, all Maori came under British rule.[52] As we have noted above, the British Colonial Office concurred with Shortland's position, and this soon become the accepted view amongst Crown officials in New Zealand.[53]

(4) Appointment of Government officials to Tauranga

Early in 1846, the new Governor, Captain George Grey, abolished the protectorate system. As Ward put it, Grey was determined to 'destroy the authority of the chiefs, supplant Maori custom with common law and force the pace of amalgamation'.[54] In place of protectors, Grey relied on a native secretary directly responsible to himself, and under an ordinance of 1846, he appointed resident magistrates to Maori districts. The latter were given summary jurisdiction in disputes between Maori and Pakeha, but in dealing with disputes between Maori, they were to constitute Courts of Arbitration composed of the magistrate and two chiefs acting as assessors. Their decisions had to be unanimous, thereby giving some recognition in Maori matters to rangatiratanga.[55]

48. Document M9, p 16
49. Ibid
50. Ibid, p 21
51. Document I12, pp 75–80; see also doc M9, pp 29, 57
52. Wake, pp 350–351
53. Document M9, pp 25–26
54. Ward, p 73
55. Ibid, pp 73–74

In 1852, Thomas Smith was appointed resident magistrate for the district of Rotorua and Bay of Plenty. He was stationed first at Rotorua and then at Maketu.[56] As far as we can ascertain from the available evidence, Smith's involvement with Tauranga Maori was limited; unless there was a serious dispute, he was unlikely to appear in the area. Even disputes between resident Pakeha and Maori did not usually involve Government officials: since most of the Pakeha traders who lived in Tauranga were married to local Maori women and occupied land on sufferance, they had to accept customary law as applied by the chiefs.

It appears that, by the mid-1850s, some disputes had arisen among hapu of Ngai Te Rangi or between Ngai Te Rangi and other iwi over land rights at Tauranga. The arrival of the Kingitanga in the district seems to have contributed to these divisions.[57] In response, some chiefs of the 'Kuini' (Queen) faction at Tauranga requested that a resident magistrate be stationed permanently there. At the Kohimarama conference in 1860 (see sec 3.4.4), Wiremu Patene claimed that he had been writing to the Governor since 1856 asking for a 'Pakeha Officer to be our head' so that the disputes at Tauranga could be settled.[58] However, no resident magistrate was stationed there until March 1860, when Henry Clarke was appointed. The district for which Clarke was given responsibility included the whole of the Bay of Plenty. Clarke appointed six Maori assessors to work under him in villages around Tauranga.[59] He claimed that at first Kingitanga adherents questioned his right to adjudicate in matters concerning them but that by the end of 1861 this 'prejudice' had passed. However, he also noted attempts by Kingitanga followers such as Henare Taratoa to establish their own runanga to settle disputes.[60]

In 1861, Smith was appointed civil commissioner for the Bay of Plenty and Rotorua under Grey's 'new institutions' initiative.[61] The civil commissioner was to preside over a district runanga of chiefs, with resident magistrates and village runanga forming a lower tier of native administration. In Ward's view, this system promised Maori 'a substantial measure of legislative, judicial and administrative authority in their own districts'.[62] It also aimed to extend the authority of the Governor into districts such as Tauranga where his authority had previously been limited. Smith was instructed by the Attorney-General, Henry Sewell, to proceed to Tauranga and gain 'the assent of the Natives . . . to the introduction of the new Institutions'.[63] However, Smith claimed that when he explained the proposed system to Tauranga Maori on 18 December 1861, the majority rejected it because they either were not willing to place themselves under the authority of the Governor or wished to remain

56. Ibid, p 80
57. Document M9, pp 59–60
58. 'Speeches at Kohimarama', 10 July 1860, MA23/10, ArchNZ, p 205 (doc M9, p 59)
59. Stokes, *A History of Tauranga County*, p 72
60. 'Report from Henry T Clarke, Resident Magistrate, Tauranga', 18 October 1861, AJHR, 1862, E–7, pp 40–41
61. Ward, p 130
62. Ibid, p 126
63. Henry Sewell, 'Preliminary Instructions to T H Smith', 14 December 1861, AJHR, 1862, E-9, sec 4, p 3

'neutral'. At the time, according to Smith, several informal runanga were operating in Tauranga independent of Government authority and were proving relatively successful.[64] In April 1862, Smith reported that the majority of Ngai Te Rangi would bring their runanga under the authority of the Governor only if they were paid, which he was unwilling to do. However, one hapu, Ngati He, was apparently willing to allow its rununga to be part of the Governor's scheme without being paid.[65] In general, Smith appears to have spent most of his time in Rotorua, although he was in Tauranga just before British troops arrived early in 1864.[66] Plans to implement Grey's 'new institutions' at Tauranga were soon abandoned once hostilities commenced in the Waikato.

3.3.4 Conclusions

Between the signing of the Treaty by Tauranga chiefs in 1840 and the outbreak of war in Tauranga in 1864, there was a very limited official presence in the region – as was the case throughout much of the country. Government involvement in the Tauranga economy was virtually non-existent, and no Crown purchasing of local Maori land took place until 1864. With a skeletal native administration, which usually operated at a distance from Tauranga, the Crown's ability to apply any kind of law to Maori in place of their own customary law was severely limited. After the Government's efforts to end the fighting of the early 1840s, there was very little recorded interaction between its officials and Maori at Tauranga until 1860. It seems that in this period the Crown was happy for Maori customary law to continue without interfering, unless Maori acted in a way considered to breach universal laws of morality. This situation was beginning to change with the appointment of a resident magistrate at Tauranga and a civil commissioner to the Bay of Plenty in 1860 and 1861. The Crown did make some tentative steps to apply English civil and criminal law at Tauranga through runanga made up of local chiefs, but these attempts met with mixed responses. Many Ngai Te Rangi chiefs of the 'kuini' faction, such as Wiremu Patene and the whole of the Ngati He hapu, appear to have supported these initiatives. On the other hand, there was also considerable opposition from those who did not align themselves with the Queen. It is clear that, by the time Crown forces advanced into the Waikato in 1863, English and colonial law had not been systematically applied to Tauranga, and so to a large extent customary law prevailed.

64. 'First Report from T H Smith', 26 December 1861, AJHR, 1862, E-9, sec 4, p 4
65. 'Third Report from T H Smith', 8 April 1862, AJHR, 1862, E-9, sec 4, p 19
66. Smith to Colonial Secretary, 11 February 1864, AJHR, 1864, E-2, p 12

3.4 Kawanatanga and Kingitanga

3.4.1 Introduction

As we stressed in chapter 1, the Crown had a responsibility to temper its application of kawanatanga by respecting rangatiratanga. Before this could happen, it needed to allow chiefs a substantial role in the exercise of government. The inability of the Government to do this, and thus give chiefs an effective voice on issues affecting them and their lands, was an important reason why many turned to an alternative authority – the emerging King movement. Those chiefs included some from Tauranga. Their support for the Kingitanga led to involvement in the Taranaki and Waikato wars, following the invasion by Crown forces of Waitara in north Taranaki in 1860, and the Waikato in 1863. For Tauranga Maori, these conflicts were an important prelude to the war that was fought on their lands at Pukehinahina and Te Ranga, which we discuss in our next chapter.

3.4.2 Tauranga Maori and the Kingitanga

The Kingitanga, which had its origins in the early 1850s, was firmly established with the selection of the Tainui chief Potatau Te Wherowhero as the Maori King in 1858. In its broadest sense, the movement was a Maori response to the European colonisation of New Zealand. In a more particular sense, it was an attempt to stem the alienation of land and, with that, the loss of chiefly authority, or rangatiratanga, over that land. Many Pakeha, including Governor Browne, regarded the Maori King as a rival to Queen Victoria and a threat to the Crown's sovereignty. The politician and editor of Auckland's *Daily Southern Cross* newspaper, Hugh Carleton, saw the movement as 'aping British institutions' and thought that it was bent on establishing 'an *imperium in imperio*' in New Zealand.[67] Maori supporters of the Kingitanga saw it not in that light but rather as a movement that would protect them, their rangatiratanga, and their land by acting as a local authority within the wider nation of Aotearoa.

The story of the selection of the Maori King has often been told.[68] We recount it briefly here. Although chiefs who visited Britain in the early nineteenth century sometimes came home with the ambition to set themselves up as a Maori king, the 'effective beginnings of the King movement', as Professor Keith Sinclair put it, 'are traceable back to 1853'.[69] Early in that

67. *Daily Southern Cross*, 5 May 1857

68. The main sources used here are: Maharaia Winiata, *Centennial Celebration, 2nd May 1858–1958: Founding of the Maori King Movement, Turangawaewae Marae, Ngaruawahia* (Ngaruawahia: King Koroki, 1958); see also Pei Te Hurinui Jones, *King Potatau: An Account of the Life of Potatau Te Wherowhero, the First Maori King* (Wellington: Polynesian Society, 1959); James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period, 1845–1864*, 2 vols (Wellington: Government Printer, 1983), vol 1, pp 150–154; M P K Sorrenson, 'The Maori King Movement, 1858–1885', in *Studies in a Small Democracy: Essays in Honour of Willis Airey*, edited by Robert Chapman and Keith Sinclair (Auckland: Pauls Book Arcade, 1963), pp 33–55; Angela Ballara, 'The King Movement's First One Hundred Years', introduction to *Te Kingitanga: The People of the Maori King Movement* (Wellington: Bridget Williams Books, 1996), pp 1–4; John Gorst, *The Maori King; Or the Story of our Quarrel with the Natives of New Zealand*, edited by Keith Sinclair (Auckland: Pauls Book Arcade, 1959).

69. Keith Sinclair, *The Origins of the Maori Wars* (Wellington: New Zealand University, 1957), p 68

year, a young Otaki chief, Matene Te Whiwhi, led a deputation around the North Island promoting the idea of uniting the tribes behind a Maori king and asking leading chiefs in turn to accept the kingship. The deputation carried a letter from Tamihana Te Rauparaha, who had recently visited England, where he had been presented to Queen Victoria, and who now urged the tribes to select a king of their own. At Wanganui, the group met Governor Grey and Bishop Selwyn. The bishop told them that 'you, the Chiefs, should carry the proposition of love and union to all the tribes'.[70] Te Whiwhi's party asked the leading Whanganui chief, Turoa, to accept the kingship, but he declined and instead proposed Te Heu Heu of Ngati Tuwharetoa. Te Heu Heu also declined, but he proposed Te Amohau of Te Arawa, who declined and proposed Te Hapuku of Hawke's Bay, who then himself proposed Te Kani a Takirau of Ngati Porou. After several other such proposals, Tupaea of Ngai Te Rangi was suggested.[71] But Tupaea would not accept the honour either and sent the proposal back to Te Heu Heu, who then put forward Potatou Te Wherowhero of the Waikato. Te Wherowhero also declined.

Then the young mission-educated chief of Ngati Haua, Wiremu Tamihana, took the lead. He sent a message to Te Wherowhero, who was living at Mangere, urging him: 'Return home to Ngaruawahia, for you should die there at home.'[72] After Te Wherowhero's return, the movement gathered pace under the leadership of Tamihana, thenceforth known as the 'King Maker'. At a series of grand hui in the Waikato in 1857 and 1858, Te Wherowhero was repeatedly asked to accept the kingship. Finally, at Ngaruawahia on 2 May 1858, he consented and was anointed by Tamihana.[73] Ever since, the kingship has remained in Te Wherowhero's family, and Tamihana's descendants have performed the coronation.

Although some of the younger advocates of the King movement, such as Tamihana, were much influenced by Christian philosophy and quoted scriptural passages, older Kingite leaders were intent on emphasising traditional Maori values and leadership. In a situation where any individual, even freed slaves, could deal with land, the chiefs wanted to reassert their mana within tribes and, lest chiefs themselves offend by selling land, assert the mana of a king over chiefs. After the crowning of Te Wherowhero, Tamihana explained that:

> it is deemed proper that the chiefs should be of one mind, and select a person who shall be entrusted with these treasures for the earth (that is the protection of our property, the management of our lands, etc). We have seen that wars arise from disputations about land, wherefore we seek out him, that he may be a depository for our lands. He will restrain the father who is badly disposed towards his son, and the elder brother who would take

70. Matene's account of Selwyn's words, in *Te Karere Maori*, 3 August 1860, p 39 (as quoted in Sinclair, *The Origins of the Maori Wars*, p 69)
71. Winiata, p 10
72. As quoted in Winiata, pp 13–15
73. Winiata, p 17

advantage of the younger brother. He will manifest his displeasure in regard to that which is evil; he will do away with the works of confusion and disorder, and he will be a covering for the lands of New Zealand which still remain in our possession.[74]

Later, Tamihana explained to Governor Browne why he had set up the kingship:

> The reason why I set up Potatau [Te Wherowhero] as king for me was, [that] he was a man of extended influence and one who was respected by the tribes of this island . . . I set him up to put down my troubles, to hold the land of the slave, and to judge the offences of the Chiefs . . . I do not desire to cast the Queen from this island, but from my piece [of land]. I am the person to overlook my piece.[75]

When the Governor admonished Maori in the Waikato for setting up their King, Tamihana asked whether it was 'on account of the Treaty of Waitangi that you are angry with us? Was it then that we were taken possession of by you? If so, it is wrong.'[76]

Although Tamihana had a vision of a Maori nation, territorially and politically autonomous, he and most other Kingitanga chiefs did not advocate driving Europeans out of the colony – they wanted merely to stop the settlers' relentless advance inland. For this reason, the King movement established an aukati at Mangatawhiri as the boundary between the King's and the Queen's land. (An 'aukati' was defined by the Ngati Awa Tribunal as 'a line that no one may cross with any intention that may be judged as hostile to those on the other side'.[77]) As Paora Te Ahura put it at the Rangiriri hui in 1857, they saw themselves as being in 'alliance' with the Queen. Or, as the Wesleyan missionary at Te Kopua, Alexander Reid, explained, their view was that: 'The King on his piece; the Queen on her piece; God over both; and love binding them to each other.'[78]

Tauranga Maori had been involved in the King movement since the offer of the kingship to Tupaea. They had had an even longer association with Tamihana's Ngati Haua since Tamihana's father, Te Waharoa, had supported them in their earlier wars against Te Arawa. As a reward, Ngati Haua were granted land at Omokoroa. Te Waharoa spent much of his later life there, and Tamihana sometimes resided there.[79] As the focus of the movement had shifted to the Waikato, Tauranga Maori were actively involved in the hui that culminated in Te Wherowhero's selection as King, and they formally pledged their allegiance to the new King in a letter of 5 April 1859. That letter was signed by 15 Tauranga rangatira, including Te Moananui, Petarika Te Kanae, and Reweti Manotini (who acted as Tamihana's secretary), and unequivocally declared: 'ki a Potatau, he tukunga atu tenei na matou i o matou whenua "ki raro i tou

74. *Daily Southern Cross*, 11 June 1858 (as quoted in Gorst, p 267)
75. Tamihana to Browne, 7 June 1861 (as quoted in Winiata, p 14)
76. Tamihana to Browne, undated (as quoted in Winiata, p 14)
77. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 35
78. *New Zealander*, 3 July 1858
79. Evelyn Stokes, *Wiremu Tamihana, Rangatira* (Wellington: Huia Publishers, 2002), pp 16, 49

kingi tanga"' ('To Potatau – we wish to place our land under your kingship').[80] Other Tauranga Maori wrote to the King in 1859 expressing similar sentiments.[81]

To what extent the hapu of Tauranga aligned themselves with the Kingitanga after 1858 is a complex question to answer at this remove. Government officials came to the conclusion that the hapu of the western part of the district were aligned to the movement while hapu of the east were not.[82] The problem with this assessment is that many Ngai Te Rangi hapu had customary interests in, and moved between, both sides of the harbour. On top of this, some leaders, such as Hori Ngatai, aligned themselves with the movement although they usually resided in the eastern part of the district, while many who mainly resided in the west did not declare themselves Kingitanga.[83] Those hapu who declared themselves to be part of the movement either through word or deed before the invasion of the Waikato included Pirirakau and Ngati Hangarau of Ngati Ranginui and Mateiraitai, a Ngai Te Rangi hapu.[84] Those who declared that they did not belong to the movement were largely those hapu based around Maungatapu such as Ngati He and the related Ngati Hoko.[85] In conclusion, it seems safe to state that those Ngai Te Rangi hapu that resided around the edge of the harbour and on the inshore islands, as well as the Te Whanau a Tauwhao, had considerable numbers on both the Queen's and the King's side by 1863, while others took a neutral stance. The hapu without interests in the west, such as Ngati He and Nga Potiki, remained 'loyal' to the Queen, while most Ngati Ranginui hapu sided with the Kingitanga.

The level of alleged commitment to the Kingitanga before 1863 amongst its adherents varied considerably in the reports of Government officials. For example, Smith stated in December 1861 that no fewer than two-thirds of Tauranga Maori were 'professed Maori Kingites' and such was their commitment it was pointless to try to persuade them to give up their allegiance.[86] However, Clarke had reported two months earlier that the influence of the Kingitanga was waning. He reported that 'The hostile feeling which existed against the Government during the Taranaki war, and the sympathy evinced towards the Waikato movement, has very much cooled down. The name of "King" is very seldom heard now among them [Tauranga Maori].'[87] Based on such reports, it is impossible to draw definitive conclusions on the level of Kingitanga support at Tauranga. The reports say more about the motives

80. *Te Hokioi*, no 1, (8 December 1862), p 4, in *Niupepa: Maori Newspapers* (http://www.nzdl.org/cgi-bin/niupepalibrary?a=p&p=about, downloaded 7 November 2003)

81. Document P15, pp 59–60

82. 'Report from T H Smith', 25 January 1862, AJHR, 1862, E-9, sec 4, p 13; 'Report from T H Smith', 8 April 1862, AJHR, 1862, E-9, sec 4, p 19

83. Document P15, pp 61–62

84. This was a large hapu based at Otumoetai. The name appears to be no longer in use.

85. 'Report from Henry T Clarke', 18 October 1861, AJHR, 1862, E-7, p 42; 'Report from Henry T Clarke', 29 January 1862, AJHR, 1862, E-9, sec 4, p 14

86. 'Report from T H Smith', 26 December 1861, AJHR, 1862, E-9 sec 4, p 5

87. 'Report from Henry T Clarke', 18 October 1861, AJHR, 1862, E-7, p 41

of the writer than what was happening on the ground in the region at that time. Clarke, in particular, seemed eager to impress his superiors by showing that the influence of the Kingitanga was relatively slight in his district.

Whatever its degree of influence, we do not see the establishment of the Kingitanga in the Waikato, and the support of Tauranga Maori for it, as being in breach of English law, colonial law, or the Treaty. We concur with Emeritus Professor Frederic M Brookfield, an authority on constitutional law, who has argued that the Kingitanga could have been regarded as having 'the status of [a] domestic dependent nation after the North American model in United States law'. In addition, he continued, the 'common law doctrine of aboriginal rights was received in New Zealand as "part of a body of fundamental constitutional law" necessarily incident to the acquisition of British sovereignty', and that body of law included limited rights of Maori self-government.[88] There was nothing in the law at the time to prevent Maori chiefs from putting their land under the mana, or rangatiratanga, of one of their number they called a king, thus giving him a veto over the alienation of that land to the Crown. On the contrary, the Treaty confirmed the chiefs' rangatiratanga over their land, allowed them to continue to apply customary law, and gave them a right to withhold land from alienation. The proclamation of British sovereignty over New Zealand did not require the automatic elimination of Maori law and custom (except for the suppression of certain excesses).

There was some recognition of this fact in early ordinances and more specifically in the New Zealand Constitution Act 1852. Section 71 of that Act allowed native districts to be set apart by letters patent, within which Maori 'Laws, Customs, or Usages' should be observed in 'all their Relations to and Dealings with each other', so long as these were not 'repugnant to the general Principles of Humanity'. No such districts were ever set apart, though they could have been for the Waikato, before the war, and the King Country afterwards. That, according to Brookfield, would have given 'districts such as the King Country a domestic, dependent nation status'.[89] However, those who exercised authority for the Crown regarded the Kingitanga as a threat to their notion of sovereignty, which they saw as being one and indivisible. They believed that there should be only one law, based on English civil and criminal law, that was applied to all, Maori and Pakeha alike.

3.4.3 The Waitara war

It is generally recognised that the New Zealand wars of the 1860s were ignited by Governor Browne's use of arms to enforce the Waitara 'purchase'. This transaction had been effected through a minor chief, Teira, against the wishes of the leading Te Atiawa chief, Wiremu Kingi

88. Frederic M Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (Auckland: Auckland University Press, 1999), p 116

89. Ibid, pp 116–118

Fig 1: *Tomika Te Mutu, 1866*. Watercolour by Horatio Robley. Reproduced courtesy of the Fletcher Trust.

Te Rangitake.[90] There was widespread Maori support for Kingi's cause, and a considerable number of Maori from other parts of the country went to fight alongside him. Although many Taranaki Maori had been hostile to Tainui since the 'musket wars', they joined the King movement after the Crown's invasion of Waitara. This put the King movement under an obligation to support Wiremu Kingi. Although the King and Tamihana did not authorise intervention, several parties of Waikato and Ngati Maniapoto went to support the Taranaki tribes in their resistance to the British troops. These groups included a Ngati Haua taua led by Wetini Taiporutu that was badly mauled in a battle at Mahoetahi.[91] We have been told in claimant evidence that some Tauranga Maori, including 10 Pirirakau, fought in Taranaki.[92] Since these people had close connections with Ngati Haua, it is possible that they were part of Wetini's taua, though they are not mentioned in James Cowan's classic 1922 account of the wars. Cowan often provided the tribal affiliations of those Maori involved, and he interviewed many Maori survivors of the campaigns. Largely as a result of Tamihana's influence, a truce was brought into effect in Taranaki in April 1861, though the war resumed there in May 1863. In the meantime, however, the Governor had attempted by diplomacy to wean the chiefs away from their support for the King movement.

90. The authoritative text is Sinclair's *The Origins of the Maori Wars*. His interpretation was accepted by the Tribunal in its report on the Taranaki raupatu: see Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996) pp 57–82.

91. Cowan, pp 193–200

92. Document N9, p 10

Fig 2: Hamiora Tu. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (PA1-O-328-16).

3.4.4 The Kohimarama conference, July 1860

In July 1860, Governor Browne invited some 200 rangatira to a conference at Kohimarama in Auckland. Claudia Orange described the conference as 'a means of confirming allegiance to the Crown of as many Maori tribes as possible, thereby isolating the Taranaki "rebels" and the King Movement'.[93] Although most of the districts were represented, there were no rangatira from Taranaki and only a few from the Waikato. There were six representatives from Tauranga: Wiremu Patene, Maihi Pohepohe, Tomika Te Mutu, Hamuera Te Paki, Hamiora Tu, and Manihira Rakau, all of them from various Ngai Te Rangi hapu. Three of them, Wiremu Patene, Maihi Pohepohe, and Hamiora Tu, had recently been appointed assessors to the new Tauranga resident magistrate, Henry Clarke.

Browne opened the conference by reading – and somewhat reordering – the English text of the Treaty. According to Browne, the chiefs who signed the Treaty had ceded 'absolutely and without reservation all the rights and powers of sovereignty'.[94] Then Browne spoke of attempts by 'persons south of Auckland' to renounce their allegiance to the Queen, set up a Maori King, and 'declare themselves an independent nation'. At a recent meeting in the Waikato, he said, it was proposed that Wiremu Kingi, 'who is in arms against the Queen's

93. Claudia Orange, 'The Covenant of Kohimarama: A Ratification of the Treaty of Waitangi', NZJH, vol 14, no 1 (April 1980), p 64

94. Thomas Gore Browne, 'The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs', 10 July 1860, AJHR, 1860, E–9, p 4

authority', should be reinforced by men from the Waikato and Kawhia. Because of these developments, Browne stated, he had called the chiefs together to hear their views. He asked for their suggestions on the better protection of property, the punishment of offenders, the settlement of disputes, and the preservation of peace.[95]

In their discussion of the Treaty, the chiefs expressed divergent views. Northern chiefs, led by the venerable Tamati Waka Nene, who had swung opinion in favour of the Treaty at Waitangi, mainly supported Browne in remembrance of what Hobson had assured them. On the other hand, Paora Tuhaere of Ngati Whatua dismissed the Treaty as 'Ngapuhi's affair', an opinion that was voiced by others. After some two weeks of discussion and dispute, Donald McLean, Browne's Native Secretary, felt obliged to read the Maori text before he called on the conference to endorse or ratify it. Throughout the conference, as Orange pointed out, McLean carefully manipulated the language of the Treaty: like Henry Williams at Waitangi, McLean played down the coercive aspects of sovereignty (kawanatanga) by emphasising the protective function of the Crown as 'te maru Kuini' (the shadow of the Queen).[96]

At the end of the conference, McLean brought the chiefs together and they all agreed to pass a resolution pledging to 'do nothing inconsistent with their declared recognition of the Queen's sovereignty, and the union of the two races, also to discountenance all proceedings tending to a breach of the covenant here solemnly entered into by them'.[97] But McLean failed to gain unanimous endorsement for two other resolutions: one approving Government policy at Waitara, the other condemning the King movement. Many chiefs were critical of Browne's failure to investigate Kingi's case with care. So far as the King movement was concerned, they could not see anything wrong with accepting the Queen's sovereignty and refusing to condemn the King movement.

We now look briefly at the contribution of the six Tauranga representatives.[98] Wiremu Patene welcomed the Governor 'in the administration of what is good', but he complained that the Governor's ways were 'not made manifest in every place' and he asked where the Governor was at the time of the sprouting of the King movement. In this, the Governor had 'acted foolishly': 'Had you written to us at the commencement, then it would have been right – whereas now it has become a great tree.' Hamiora Tu reiterated this message, saying that the King movement should have been dealt with at the beginning but also asking that peace be made with Wiremu Kingi. Maihi Pohepohe also requested this, so 'that his [Kingi's] body and the Governor's may become one'. Manihira Rakau said the chiefs should inquire into the character of the Governor's speech and added that he did not hear one thing wrong in it.

95. The English text of the speech is reproduced in Thomas Gore Browne, 'The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs', 10 July 1860, AJHR, 1860, E–9, pp 3–5.

96. Orange, 'The Covenant of Kohimarama', p 74

97. Thomas Gore Browne, 'The Minutes and Proceeding of the Kohimarama Conference of Native Chiefs', 10 July 1860, AJHR, 1860, E–9, p 24 (as quoted in Orange, 'The Covenant of Kohimarama, p 69)

98. The quotations that follow are taken from speeches excerpted from the record of the Kohimarama conference proceedings, July 1860, MA23/10, ArchNZ (see doc M9(c)(13)).

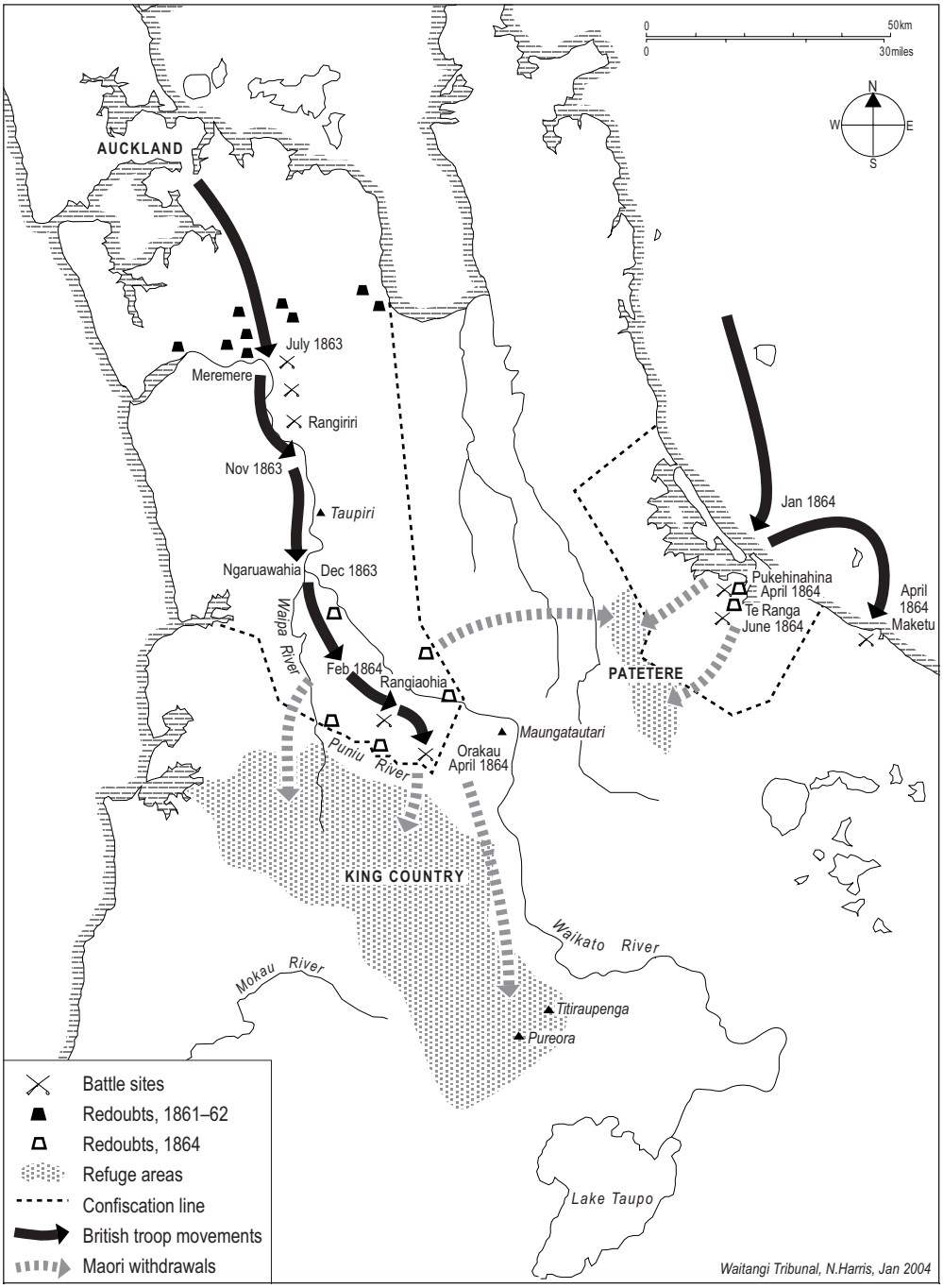
Tomika Te Mutu echoed the Governor's hope that, if the King movement were ignored, 'the King will vanish'. Tomika added that he did not believe in the King: 'that is evil work'. He later remained loyal to the Queen, acting on her side when imperial troops attacked Pukehinahina. In a later statement at the conference, Tomika again expressed disapproval of the King movement but then added that his land had been handed over to the King by others, though he claimed still to hold the mana over it. Tomika also asked for a magistrate to be sent to Tauranga. The Tauranga delegation was pleased that Clarke had just been appointed resident magistrate and they were prepared to work with him as their 'head'. Patene was one of the recently appointed assessors. He too disagreed with the King movement, though he thought that the war with Wiremu Kingi should be ended. After the conference concluded, four of the Tauranga representatives wrote to Governor Browne. They expressed their support for the Treaty, for the introduction of laws to punish large and small offences, and for the practical exercise of the Queen's sovereignty at Tauranga.[99]

The Ngai Te Rangi representatives at the conference were from the eastern part of the Tauranga Moana district, an area that remained largely loyal to the Crown when the Waikato war began. Known Kingite supporters were not invited, and none of the Tauranga speakers supported the King movement. But this did not mean that they were uncritical of the Governor; although they did not openly criticise his handling of the Waitara dispute, they certainly wanted the quarrel with Kingi to be ended and peace to be restored, in common with other speakers. And, as we have noted, several of the Tauranga chiefs pointed out that Browne's failure to provide law and order through the appointment of magistrates had left the field open for the King movement.

3.4.5 The Waikato war

Before the Waikato war began in July 1863, the Government had devised two policies to break what was called the King movement's 'land league'. The first was a move to abolish the Crown's right of pre-emption. This was initially attempted by the Native Territorial Rights Bill in 1859, though that Bill was disallowed by the Imperial Government for being in breach of the Treaty. But, after the disaster of Waitara, caused in the eyes of the Governor's critics by Crown purchase blunders, a Native Land Act was passed in 1862. It was not disallowed and would have permitted the direct purchasing of Maori land by settlers once a Native Land Court had individualised the Maori interests in it. Because of the war and subsequent land confiscations, the Act was not applied, except in one or two instances north of Auckland. It was replaced by the Native Lands Act 1865, which was gradually brought into operation in many parts of the country not affected by confiscation.

99. Document M9, pp 59–60



Map 8: The Waikato war

The Crown's second policy measure was the New Zealand Settlements Act 1863, which provided for the confiscation of land from Maori said to be in rebellion. We discuss this Act in more detail in chapter 6. Although the measure was not introduced before the invasion of the Waikato, plans were already afoot to confiscate land there. When Grey replaced Browne as Governor at the end of 1861, he was determined to deal with what he and his advisers

perceived as the dire threat to Auckland posed by the King movement. Grey decided to construct a military road through south Auckland, to reach Pokeno on the edge of the Waikato. As we noted above, the King movement's response was to impose the aukati at Mangatawhiri Stream, beyond which British forces passed at their peril. Although the war was resumed in Taranaki after imperial troops were ambushed by Maori at Oakura on 4 May 1863, General Cameron was soon able to move the bulk of his troops to Auckland in preparation for the larger task of invading the Waikato. On 14 July, Grey issued a proclamation that called on supporters of the King in the Waikato to allow imperial troops to take up posts on their lands and, if they resisted, threatened them with the confiscation of their land. The proclamation was backdated to 11 July, because Cameron's forces had already advanced across the Mangatawhiri Stream on 12 July. Concurrently, armed forces accompanied by civil officers called on Maori between south Auckland and the Waikato to declare their allegiance to the Queen or to depart for the King's territory. Many chose the latter and their property was destroyed.[100]

A week after imperial troops crossed the Mangatawhiri, they met concerted armed resistance at Koheroa. After overrunning the Maori fortifications there, Cameron continued to press deeper into the Waikato. Meanwhile, the King's forces counterattacked by striking at outlying settlers and Cameron's lines of communication in the Hunua and Wairoa Ranges. Once he had fought off these attacks, Cameron continued his advance upriver. He used gunboats to outflank Maori fortifications at Meremere and force its evacuation on 1 November. Next, he assaulted and took the well-defended pa at Rangiriri on 21 November. Cameron's way into the Waikato was then clear, and he took Ngaruawahia, the King's capital, without a fight on 8 December. It took several more months to overwhelm the King's forces in the Waikato–Waipa Basin, but this was finally achieved with the capture of Orakau on 2 April 1864.[101]

When Cameron invaded the Waikato, supporters of the King movement throughout the island were drawn into the fighting, because of their allegiance to the King and because of traditional tribal and whanau alliances. Tauranga supporters of the Kingitanga became involved in several theatres of war. The few details of this involvement provided by the claimants and the Crown are sourced mainly from Cowan's account of the New Zealand wars. According to Cowan, a party of Ngai Te Rangi and Pirirakau led by Hori Ngatai and Titipa fought in the Hunua and Wairoa Ranges and Titipa was killed at Wairoa.[102] Cowan did not mention any participation by Tauranga Maori in the engagements at Meremere and Rangiriri, although Hori Ngatai, in reminiscences recorded by Gilbert Mair, said that he and others from Tauranga were present at Meremere and fired on Cameron's gunboats on the Waikato River.[103] Cowan said that some men from Ngai Te Rangi fought at Hairini, near present-day Te

100. Gorst, pp 245–246; Cowan, pp 251–252

101. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), pp 142–176

102. Cowan, pp 259–260, 291

103. Gilbert Mair, *The Story of Gate Pa: April 29th, 1864* (Tauranga: Bay of Plenty Times, 1937), p 22

Awamutu, on 22 February 1864.[104] After Hairini, the Ngai Te Rangi contingent entrenched themselves with Ngati Haua at Te Tiki o Te Ihingarangi, on the lower slopes of Maungatautari, but they were not attacked by Cameron's troops. They withdrew from there on hearing of Colonel Robert Carey's occupation of Te Papa at Tauranga.[105] For this reason, no Tauranga Maori fought in the final battle of the Waikato war at Orakau in April.

One problem with Cowan's account is that he gave no estimates of the number of Tauranga Maori involved in the various engagements in the Waikato. We get some idea of the figures, however, from a report by compiled by Thomas Smith in February 1864, after most Tauranga Maori present there had returned home. Smith estimated that a total of 233 out of a population of 571 adult males had joined their allies in the Waikato. Most of these (169) came from hapu on the western side of the harbour, including Ngaitamarawaho (19 of 21 adult males), Te Matewaitai (19 of 25), Ngatiamarawhariua (30 of 31), Pirirakau (23 of 27), Ngatitokotoko (20 of 21), Te Urungawera (19 of 23), Te Whanau a Te Tauwhao (11 of 22), and from the hapu of Ngatitamahapai, Ngaterangi, Ngatipango, and Ngatimotai (30 of 43).[106] Other western hapu, including Patutahora, Te Ngare, and Te Pohoera, contributed 10 men out of a total of 55. However, none of the 35 Te Patuwai adult males joined the war. On the eastern side, only 34 warriors out of a possible 238 had joined the King's cause, almost half of their number being from Ngai Te Ahi. In addition, Smith noted that 30 out of 80 men from Tuhua, Motiti, and other offshore islands had joined the King's forces.[107]

3.4.6 Conclusions

At this stage in our report, we make no findings on the involvement of Tauranga Maori in the Waikato war, though we do so when considering the issue of rebellion in our next chapter. Here, we merely conclude that, although hapu from the western part of the Tauranga district were heavily represented, Tauranga Maori did not make a very substantial contribution to the Waikato war. They were involved in various minor engagements in the Hunua and Wairoa Ranges, and in the Waikato itself, but apparently they did not take part in the major engagement at Rangiriri, and were certainly not at Orakau. We can be reasonably sure that Tauranga Maori took part in Waikato engagements to support their King and because of their connections to Ngati Haua. It is notable that the majority of those who went to the Waikato were from hapu in the western part of the Tauranga district. These groups had close associations

104. Cowan, p 357

105. Ibid, p 421

106. Smith's original spelling has been retained. Some of these hapu names (specifically, Te Matewaitai, Te Urungawera, Ngatitamahapai, and Ngatimotai) are not recorded on the Tauranga Moana register of claims. They appear to be no longer used and may have been absorbed into other hapu.

107. Thomas H Smith, 'Return showing Native Settlements and Tribes in Tauranga, with Number of Adult Male Population in each and Number from Each which have Joined Insurgents since Commencement of Hostilities', 11 February 1864, AJHR, 1864, E-2, p 13. Smith made an earlier return which said that 260 of 542 adult males had gone to the Waikato, but we have not used this since it did not include hapu affiliations: see sec 4.3.

with Wiremu Tamihana and Ngati Haua, as was stated in tangata whenua evidence before the Tribunal.[108] In fighting Ngati Haua's battle, they were paying utu, or compensation, for Ngati Haua's support for them in the 'musket wars'. It is thus not surprising that the Tauranga force spent the last phase of the war entrenched with Ngati Haua at Te Tiki o Te Ihingarangi. No doubt, they would have defended that pa had it been attacked before they had to return to defend their own lands when imperial troops landed at Te Papa.

3.5 Chapter Summary

The main points in this chapter are as follows:

- Though there was considerable interaction between Tauranga Maori and Pakeha in the period before 1864, the presence of the Crown in the district was relatively limited. For this reason, and as a result of the resistance shown by some Tauranga hapu to the Government encroaching in their affairs, customary law largely prevailed in the region until 1864. Attempts to apply English criminal and civil law were largely limited to the period after 1860 and even then were sporadic and piecemeal in nature before 1864.
- From the late 1850s, many Tauranga Maori looked to the emerging Kingitanga as an alternative source of authority to that of the Crown. This tendency was particularly marked amongst those hapu with close historical ties to Ngati Haua and this led to their involvement in the Waikato war. On the other hand, those Tauranga Maori with weaker ties to Ngati Haua largely refused to side with the Kingitanga.
- Though their contribution to the defence of the Waikato was relatively limited, the well-documented involvement of some Tauranga hapu in the Waikato fighting was to have important implications for all Maori in the district.

108. For example, Kihi Ngatai noted that, in Te Turupa of Ngati Hangarau's famous lament for her husband who had been killed in fighting with the British, she asked the Ngati Haua tupuna Tamanataha and Tamangarangi to welcome him into the next world: see doc D24(a), pp 13–14, 20.

CHAPTER 4

THE WAR IN TAURANGA

4.1 Introduction

In this chapter, we examine the battles at Pukehinahina and Te Ranga in 1864. First, we situate them in their political and military context before describing the engagements themselves. Next, we examine claimant and Crown submissions and discuss the legal issue of rebellion, and then we conclude the chapter with our findings. The consequences of the fighting will be recounted in subsequent chapters.

For both sides, the battles were a continuation of what had gone before, notably in the Waikato, as we have discussed in chapter 3. Though Maori who resisted the imperial troops in the Waikato were fighting for their King, they usually made their last stand on their tribal territory: the central Waikato tribes at Meremere and Rangiriri and Ngati Maniapoto at Orakau. So too did Tauranga Maori: at Pukehinahina and Te Ranga. But, as we noted earlier, there were volunteers from elsewhere at the various engagements in the Waikato, including some from Tauranga. Indeed, the impractical defensive position at Orakau was possibly chosen at the insistence of Tuhoe volunteers rather than by the Ngati Maniapoto chiefs.[1] When the first imperial troops landed at Tauranga in January 1864, Tauranga Maori still in the Waikato hurried home to make what they believed would be their last stand for their land. As we explain below, they in turn were to be supported by volunteers from outside the Tauranga district.

The war that was progressing around the central North Island clearly was supported by most colonists – though that support was stronger in the North Island than in the South – and by their representatives in Parliament. But the Governor, who had responsibilities to Maori as well as to Pakeha, and to the Colonial Office in London as well as to the colonial Ministers, was necessarily more equivocal. So too was General Cameron, who, with his officers and men, was fighting a war on the farthest frontier of the empire. It was a war, moreover, that began to create resentment among the imperial forces once they became aware of the pressures for confiscation that were in large part driving the conflict, and the valour of

1. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), pp 166–168

their Maori foes, who were fighting in defence of their land.[2] Though the Governor, the general, and the Ministers were all agents of the Crown, their aims and ambitions were often in conflict, and the resulting squabbles distorted both the conduct of the war and the introduction of confiscation and other policies. Responsibility for the war fell under the broad ambit of native affairs, which was then being transferred gradually from the imperial to the local colonial government, and to a Native Minister in place of the Governor. Since we consider that the Tauranga military campaign and the associated confiscation were profoundly affected by the manoeuvres over responsibility for native affairs, we now provide a brief outline of the main stages of this complicated and tortuous process.

4.2 Responsibility for Native Affairs

We are indebted to two historians, Professors James Rutherford and Brian Dalton, for their scholarly examination of the topic.[3] Our discussion here is based largely on their works.

Taking responsibility for native affairs was just one aspect of the development of responsible government. After 1840, New Zealand was initially a Crown colony, with a Governor, instructed by the Secretary of State for the Colonies, who was not obliged to take the advice of any locally nominated or elected representatives. This situation changed with the introduction of the New Zealand Constitution Act 1852, which provided for a quasi-federal system of representative government, with elected superintendents and provincial councils and a bicameral General Assembly with an elected House of Representatives and an appointed Legislative Council. Though the provinces had control of a range of matters relating to settlement, authority for the purchase of Maori land and other aspects of native affairs remained with the Governor and Parliament.

When the first House of Representatives was elected in 1854, the members demanded responsible government; in other words, they wanted the Governor to choose a Ministry that could command the support of a majority of the General Assembly. There was nothing in the Constitution Act on the formation of a Ministry or its responsibilities, though it was presumed that the Ministers would be chosen from the General Assembly, as per the practice of the British Parliament and as per the constitutional reforms recently introduced in the Canadian and Australian colonies. Governor Browne asked the Secretary of State for advice, and in 1856 he was instructed to introduce responsible government for domestic affairs, except for native matters. For the latter, he was to continue to take the advice of the Secretary of State, who was in turn advised by the Colonial Office. At first, Browne had some difficulty

2. Brian J Dalton, *War and Politics in New Zealand, 1855–1870* (Sydney: Sydney University Press, 1967), p 187; James Rutherford, *Sir George Grey, 1812–1898: A Study in Colonial Government* (London: Cassell and Company Ltd, 1961), pp 522–526, 530–532, 562–563

3. Rutherford, chs 33–36; Dalton, pp 138–259

forming a stable administration, but in 1856 Edward Stafford formed a Ministry that was to remain in office until after the outbreak of the Taranaki war in 1860. That Ministry eventually resigned in July 1861, largely because of the military stalemate that had emerged in Taranaki. Meanwhile, the colonial politicians had begun pressing for control of native affairs. In 1858, Browne allowed a Native Minister to be appointed, but he did not concede full responsibility of the portfolio to him. This system of dual responsibility encouraged conflict between the Governor and his Ministers and resulted in ineffective native administration.

This was the situation when war broke out in Waitara in 1860 – a war which the colonial politicians were quick to blame Governor Browne and his officials for. As a result, instead of trying to wrest control of native affairs from the Governor, the Ministers now tried to avoid that responsibility – and with it the cost of the imperial troops, who were needed in increasing numbers. In turn, the Secretary of State, the Duke of Newcastle, attempted to transfer responsibility for native affairs to the colonial Ministry in 1861. He also replaced Browne with Sir George Grey, who had distinguished himself in his first governorship of New Zealand and, in the years following, as governor of the Cape Colony. During his first term in New Zealand, Grey had been an autocratic colonial governor. He had neither the temperament nor the inclination to abide by the wishes of responsible Ministers. As both Rutherford and Dalton frequently detail, Grey's two governorships in New Zealand were characterised by deviousness and dishonesty. But he was skilled at doctoring his dispatches and appealing to high principles to justify his actions.[4] Though Grey ostensibly surrendered the responsibility for native affairs to his Ministers in 1861, he retained important residual authority, including the overall command of the imperial troops. He used this authority to the utmost and thus remained an important agent of the Crown.

Also important, and increasingly so, were the colonial politicians who from time to time held ministerial office and so acted on behalf of the Crown. In the small world of New Zealand provincial and colonial politics, a tiny group of politicians shared and exchanged ministerial office. Some did not separate their private interests, including the acquisition of Maori land, from the public interest.[5] Frederick Whitaker and Thomas Russell, who were prominent members of several Ministries, were also partners in Whitaker and Russell, Auckland's leading law firm, which derived much of its income from land conveyancing. Grey became deeply suspicious that the pair were seeking to further their private interests under the cover of a grand confiscation plan which would take in Tauranga, along with most of the Waikato.[6] Confiscation also seemed to offer a solution to the dilemma of paying for the imperial troops, since any confiscated land not used for military settlers could be sold to defray the costs of the war.

4. Dalton, pp 202–205; Rutherford, pp 284–285, 555–559
5. Document L3, pp 3–6
6. Rutherford, pp 513, 638

In July 1861, the Stafford Ministry was defeated. The politicians who had condemned Browne for his actions over Waitara formed a new Ministry, led by William Fox and with Walter Mantell as Minister for Native Affairs. Fox introduced a 'peace policy' and promised 'self government' for native districts, where Maori would govern themselves through local runanga under the guidance of Pakeha magistrates and civil commissioners. As we discussed in the previous chapter, Grey inherited this system when he returned to New Zealand late in 1861 and developed it further. On the issue of responsible government, Grey told his predecessor that, although he 'intended to transfer all power to his Ministers', he would take care to see that they acted only 'as he pleased'.[7] He offered Fox's Ministry responsibility for native affairs but ignored the Ministers' condition that they would accept responsibility only if they did not have to pay for the imperial troops. In May 1862, the Duke of Newcastle formally accepted Grey's transfer of native affairs but demanded payment for the troops. Fox was unwilling to accept this and resigned in August. The new Ministry, headed by Alfred Domett but dominated by Whitaker and Russell, also refused to accept responsibility for the payment of the troops. They soon developed a new policy that they hoped would meet the costs of war.

Although Grey and his Ministers continued to advocate peace, they were preparing for war. Grey's support for the 'new institutions' in Maori districts, including the Waikato, was compromised by his other actions, which showed that he had little intention of allowing Maori real authority or rangatiratanga. Grey cancelled Browne's promise to reassemble the Kohimarama conference, explaining that it was not 'wise to call a number of semi-barbarous Natives together to frame a Constitution for themselves'.[8] As for the King movement, Grey visited Taupari on the lower Waikato in December 1861, where he told the King's representatives that he would never attack the Waikato without good cause. Grey also told them, however, that the King movement was bad, that the King should be given up, that he would work with all chiefs who would help him, and that he would look upon each chief as a king of his tribe. He told them he would have 'twenty kings in New Zealand before long, and those kings who work with me shall be wealthy kings, and the kings of wealthy people'.[9] Grey then announced that he was about to build a road from Auckland to the banks of the Waikato River.

Back in Auckland, Grey ordered the troops to construct a road through the Hunua Ranges to Pokeno, near the King's aukati at Mangatawhiri. Grey also tried to erect forts further up the Waikato River. A year later, he returned to the Waikato and told supporters of the King that, although he would not fight against their King with the sword, he would 'dig around him till he falls of his own accord'.[10] However, there could be little doubt by this time that Grey

7. Browne, 17 September 1864 (as quoted in Rutherford, p 456)
8. Grey to Duke of Newcastle, 30 November 1861, AJHR, 1862, sec 2, no 14 (as quoted in Dalton, p 145)
9. John Gorst, *The Maori King; Or the Story of our Quarrel with the Natives of New Zealand*, edited by Keith Sinclair (Auckland: Pauls Book Arcade, 1959), pp 148, 141
10. Ibid, pp 185–186, 208

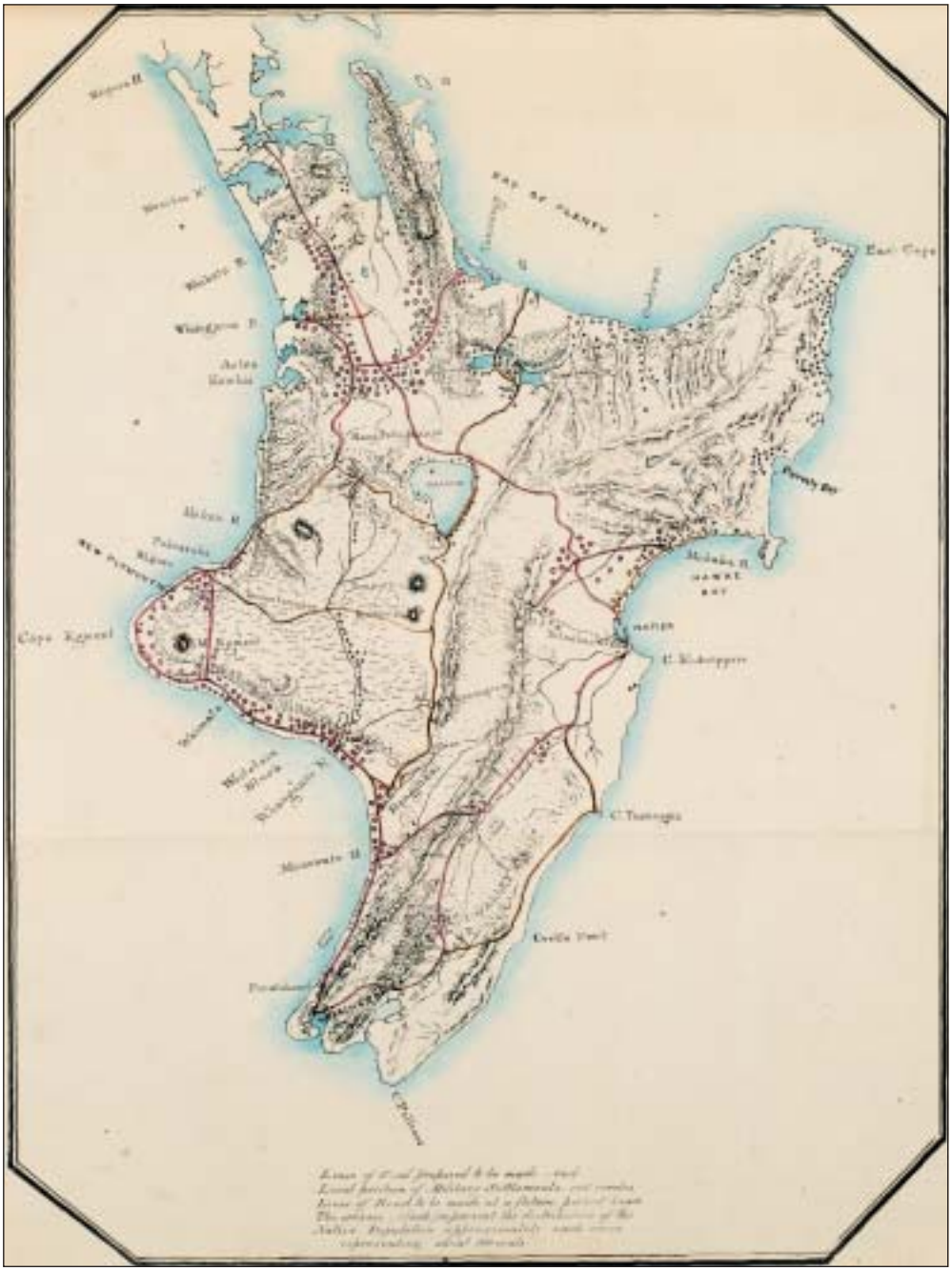
intended to invade the Waikato. In a memorandum of 24 June 1863, Domett accepted responsibility for a plan previously outlined by Grey under which military posts would be established along the Waikato as far as Ngaruawahia and the land of any resisting Kingitanga would be confiscated.[11] This plan was embodied in Grey's backdated proclamation, issued on 14 July 1863, after General Cameron's forces had crossed the aukati.

As Cameron's army advanced into the Waikato, the confiscation policy was taken up by the Domett Ministry with 'a greedy enthusiasm', as Sinclair put it.[12] While Grey had in mind a limited confiscation, his Ministers had concocted a grand plan to confiscate vast areas of the North Island. Domett's memorandum on roads and military settlements, dated 5 October 1863, revealed plans to construct over 1000 miles of arterial roads through the island and to locate 20,000 military settlers on the frontiers of the confiscated land. Discussing the proposal to place some of these settlers in the province of Auckland, the Domett Ministry proposed a frontier line 'from Raglan [Whaingaroa], on the West Coast, to Tauranga on the East'. Half of the settlers were to be located on 500,000 acres of land along this line. In the words of the memorandum, the frontier would run 'irregularly'; it would take in the fertile land of the Waipa Valley and extend only a 'branch' down to Tauranga. This proposal took in the best fertile flat country of the Waikato, together with the natural harbour at Tauranga, while avoiding the densely wooded hill country of the Kaimais. The Ministry hoped to finance the confiscation with an imperial loan of £4 million, to be repaid from the sale of confiscated land not needed for military settlers.[13] Rutherford described Domett's memorandum as 'an indiscretion which disclosed prematurely too much of what ministers had in mind'.[14] Domett had also made another indiscretion: he had decided not to proceed with the purchase of the disputed Waitara block. As Rutherford put it, 'Whitaker and Russell disapproved of Domett's surrender of Waitara, and now that it was war they wanted to get rid of their puppet and assume direction of affairs themselves'.[15]

On 30 October 1863, Domett resigned and a new Ministry was formed with Whitaker as Prime Minister and Attorney-General, Fox as Native Minister, Russell as Minister of Colonial Defence, and Reader Wood as Colonial Treasurer. Three of the five-member Ministry – Whitaker, Russell, and Wood – were Aucklanders. They were intent on opening the Waikato and the lands beyond for colonisation. The Whitaker Ministry accepted responsibility for native affairs and proposed to pay for it by raising an imperial loan secured against confiscated land. The confiscation policy was formalised by Whitaker, who personally drafted the New Zealand Settlements Act 1863 and the Suppression of Rebellion Act 1863. When Wood introduced the accompanying Loans Bill to Parliament in November, he said

11. Dalton, pp 175–176
12. Keith Sinclair, *A History of New Zealand* (Middlesex: Penguin Books, 1959), p 138
13. Alfred Domett, 'Memorandum on Roads and Military Settlements in the Northern Island of New Zealand', 5 October 1863, AJHR, 1863, A-8A, pp 3, 7 (as quoted in Rutherford, pp 493–494)
14. Rutherford, p 494
15. Ibid, p 495

4.2



Map 9: Sketch map showing proposed roads, existing military settlements, and the distribution of Maori in the North Island, 1863. Source: 'Memorandum on Roads and Military Settlements in the Northern Island of New Zealand', AJHR, 1863, A-8A.

that four million acres would be confiscated in the Waikato and Bay of Plenty and that this land would be secured by an arc of military settlements running from Raglan on the west coast to Tauranga on the east.[16] The confiscation legislation was accepted in principle by the Duke of Newcastle in November 1863 on the assumption that the Ministry was now accepting responsibility for native affairs and the payment of the imperial troops. Confiscation would apparently now pay for the war.

At this time, Cameron was turning the King's forces in the Waikato with victories at Meremere and Rangiriri. As we mentioned, Cameron soon took the King's capital at Ngaruawahia without a fight. The question then arose as to whether the war and confiscation would stop there or would advance into the fertile Waikato–Waipa Plain. Grey wanted to limit the war and confiscation, but Whitaker and Fox 'had their eyes on the rich lands of the Rangiaowhia district,' which was within their planned confiscation line from Raglan to Tauranga. As Rutherford explained, Whitaker's 'belligerence was further demonstrated in January 1864, when he urged the military occupation of Tauranga', which Fox regarded as 'the harbour of Waikato'.[17] The war continued, advancing to Orakau in the Waikato and to Te Ranga in Tauranga, thus paving the way for Whitaker's grand confiscation. As Dalton put it: 'Nothing now stood in the way of confiscating the necessary land and establishing military settlements – nothing, that is, except relations between Grey and his Ministers.'[18]

Grey was by then so suspicious of Whitaker's intentions that he refused to sign an Order in Council that Whitaker had drafted providing for the confiscation of land north of the Raglan–Tauranga line.[19] Grey's resistance was strengthened by the arrival in June 1864 of a dispatch from the new Secretary of State for the Colonies, Edward Cardwell, instructing him to withhold the approval of a confiscation until he was satisfied that it was 'just and moderate'.[20] A supplementary dispatch advised Grey that he could ignore the advice of his Ministers over the issue. Cardwell was now saying that 'double government' would have to continue so long as imperial troops remained in the country.[21] The row continued until 24 November 1864, when Whitaker and his Ministry resigned.

The incoming Ministry was led by Frederick Weld and contained no Aucklanders. It was known as the 'self-reliant Ministry' because Weld finally accepted the logic of Cardwell's dispatch: that the colony must pay for imperial troops or allow them to return home and rely on its own forces. At the end of November, Weld's Ministry introduced resolutions calling for the withdrawal of imperial troops. With this concession, Grey accepted that enough land had to be confiscated to meet commitments to military settlers. He conceded to Weld almost as

16. Dalton, p 181
17. Fox, 'War in New Zealand 121', in Sewell, journal, 13 February 1864 (as quoted in Rutherford, pp 502–503)
18. Dalton, p 188
19. Orders in Council are a kind of lawmaking instrument, just as Acts of Parliament are. Orders in Council, however, are issued only by the Monarch, or her representative, acting on the advice of an Executive Council.
20. Edward Cardwell, 26 April 1868, AJHR, 1864, E-2, app, p 20 (as quoted in Rutherford, p 511)
21. Dalton, pp 195–197, 201

much confiscation as he had refused Whitaker. The most important difference was that the confiscation in Tauranga was separated from that in the Waikato. Grey signed the proclamation confiscating over a million acres of land in the Waikato on 17 December 1864, though he delayed signing the Tauranga proclamation for another five months – until 18 May 1865. We discuss this in detail in chapters 5 and 6.

The long controversy over the responsibility for native affairs was almost over. But not quite: so long as a single regiment of imperial troops remained in New Zealand and engaged in warfare against Maori, Grey could seek to control those soldiers (as he would during the campaign in southern Taranaki). Indeed, it could be said that responsible government in native affairs was not fully conceded until 1867, when the last regiment left and Grey himself was recalled. These later wrangles, however, did not affect Tauranga, and we need not be concerned with them.

4.3 The Military Occupation of Te Papa

The military occupation of Tauranga followed several months of unease among the European residents arising from the involvement of local Maori in the Waikato war. According to Crown witness Dr John Battersby, European settlers began to leave Tauranga in August 1863, and the CMS station at Te Papa was evacuated after 'a threat was received from Wiremu Tamihana'. This so-called threat was contained in a letter of 26 July 1863 from Tamihana to Alfred Brown (by then the archdeacon) that has been variously interpreted. Battersby did not use the original but quoted from the missionary Charles Baker's version of it, to the effect that Tamihana had threatened to make a 'general sweep' and that 'the defenceless should fare alike with those who defend[ed] themselves'.[22] A translation of Tamihana's original letter to Brown is printed in the *Appendix to the Journal of the House of Representatives* as an enclosure in a dispatch from Grey to the Duke of Newcastle. It is consists mainly of criticism of Grey's handling of events in Taranaki and the Waikato. As a consequence of 'these wrongs', Tamihana wrote, he had 'consented to attack the whole Town [of Auckland]'. In this attack, he added, 'the unarmed people will not be left'.[23] Nowhere in the letter did Tamihana threaten to make a 'general sweep', or mention Tauranga, or threaten Pakeha there.

Whatever the threat in Tauranga in July 1863, the prospects for peace improved towards the end of the year. Late in December, Brown returned to his mission station at Te Papa. From there, he reported directly to Grey, sometimes enclosing 'native letters' and cautioning Grey against reading too much into them on the actual levels of support among Tauranga Maori

22. Baker to CMS, 29 August 1863, 9 MS1839, ATL (doc M9, p 71)
23. Thompson (Tamihana) to Brown, July 26 1863; Grey to Duke of Newcastle, 8 August 1863, encl 4, AJHR, 1863, E-3A, p 7

for the Kingitanga in the Waikato war.[24] Grey also received information from his officials, including Smith, the civil commissioner, and local traders such as John Faulkner, who left, and Daniel Sellars, who appears to have remained. However, according to Battersby, most of the European settlers were soon to leave.[25]

In January 1864, Cameron decided to send a military expedition to Tauranga, not to seize more land but to disrupt any movement of food, ammunition, or fighters to the Waikato.[26] Cameron and Whitaker also hoped that a military expedition to Tauranga would act as a diversion from the war, that would draw part of the Maori fighting force out of the Waikato.[27] According to Edward Shortland, the under-secretary of the Native Department, the decision to send a force to Tauranga was made at Cameron's request at a meeting between Grey and his Ministers on 18 January.[28] Cameron's plan was eagerly endorsed by Whitaker, who did indeed want to seize more land. In a memorandum to Grey of 19 January 1864, Whitaker described Tauranga as 'the route for all the disaffected Natives from the East Coast to go to and return from the war in Waikato'. He asserted that: 'All the Natives on the west side of the harbour are decided enemies – have been to the war – are there now – or are preparing to go.' To punish them, Whitaker wanted the military to seize all crops on the western side of the harbour and to prevent communication across it, though not to go to the eastern side at all, lest the troops disturb those Tauranga Maori deemed to have remained loyal. Now that it had become 'publicly known that an expedition [to Tauranga] is in contemplation', Whitaker added, the force should be sent at once since any delay would 'be considered proof of weakness, and encourage the enemy'. Whitaker wrote that a vessel had already been sent to Tauranga to evacuate Brown and other Pakeha. It was therefore necessary to send the force in quickly in order to occupy the mission station (which could provide accommodation for 500 troops) before it was destroyed by local Maori.[29] Though other Pakeha may have left, Brown himself remained at his mission station when the troops arrived and stayed there throughout the Tauranga war.

Grey's response to Whitaker's memorandum reflected the tension between the Governor and his Ministers. 'Ministers having expressed . . . their clear conclusion . . . that the expedition should go to Tauranga . . . without any delay,' Grey wrote, 'the Governor feels that under the present form of Government he ought to issue the necessary orders for its departure'. Grey added that he had 'yielded to the opinion of Ministers with some reluctance'. Moreover, he thought that the expedition should proceed only on the understanding that

24. W H Gifford, *A Centennial History of Tauranga* (publisher unknown, 1940), pp 218–219; doc M9, pp 72–73
25. Document M9, p 73
26. Ibid, pp 74–75
27. Whitaker stated in January 1864 that 'The General is of the opinion that, in a Military point of view, he would derive considerable advantage from the diversion': Whitaker, Memorandum by Ministers as to Sending an Expedition to Tauranga', 19 January 1864, AJHR, 1864, E-2, p 7.
28. Shortland to Smith, 22 February 1864, AJHR, 1864, E-2, pp 14–15 (doc M9, p 75)
29. Whitaker, 'Memorandum . . . as to Sending an Expedition to Tauranga', 19 January 1864, AJHR, 1864, E-2, p 7

Fig 3: Tauranga, circa 1864. From the right, the cemetery (with Mauao in the background), Monmouth redoubt, residence of Captain Sellars (of steamer *Tauranga*), Tauranga, school, field headquarters, Durham redoubt. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (F-22640–½).

it was 'of a temporary character, and that it can at any moment be withdrawn if the safety of the Southern Settlements or any other urgent cause [renders] such a course desireable'.[30] Whitaker wasted no time in drafting instructions for Colonel Carey, who was to command the expedition. Carey was instructed to occupy the mission station and to refrain from interfering with Maori east of the harbour unless instructed to, but he was to take possession of crops and cattle belonging to Maori on the western side.[31] These instructions became another matter of dispute between Grey and Whitaker.

Immediately the Governor had issued his approval, Cameron sent Carey and 600 troops to Tauranga aboard the HMS *Miranda*. Acting on Whitaker's explicit instructions, Carey entered the harbour at dawn on 21 January 1864 and took possession of the CMS station.[32] The mission buildings, including the chapel, schoolhouse, and two houses (but excluding Brown's house) were commandeered for use as a headquarters and officer accommodation, while the majority of the troops were housed in bell-tents in the mission grounds.[33] Two earth redoubts were rapidly constructed adjacent to the mission: the Monmouth redoubt overlooking the eastern side of the peninsula and the Durham redoubt on the ridge at the beginning of the road leading inland (see fig 3).

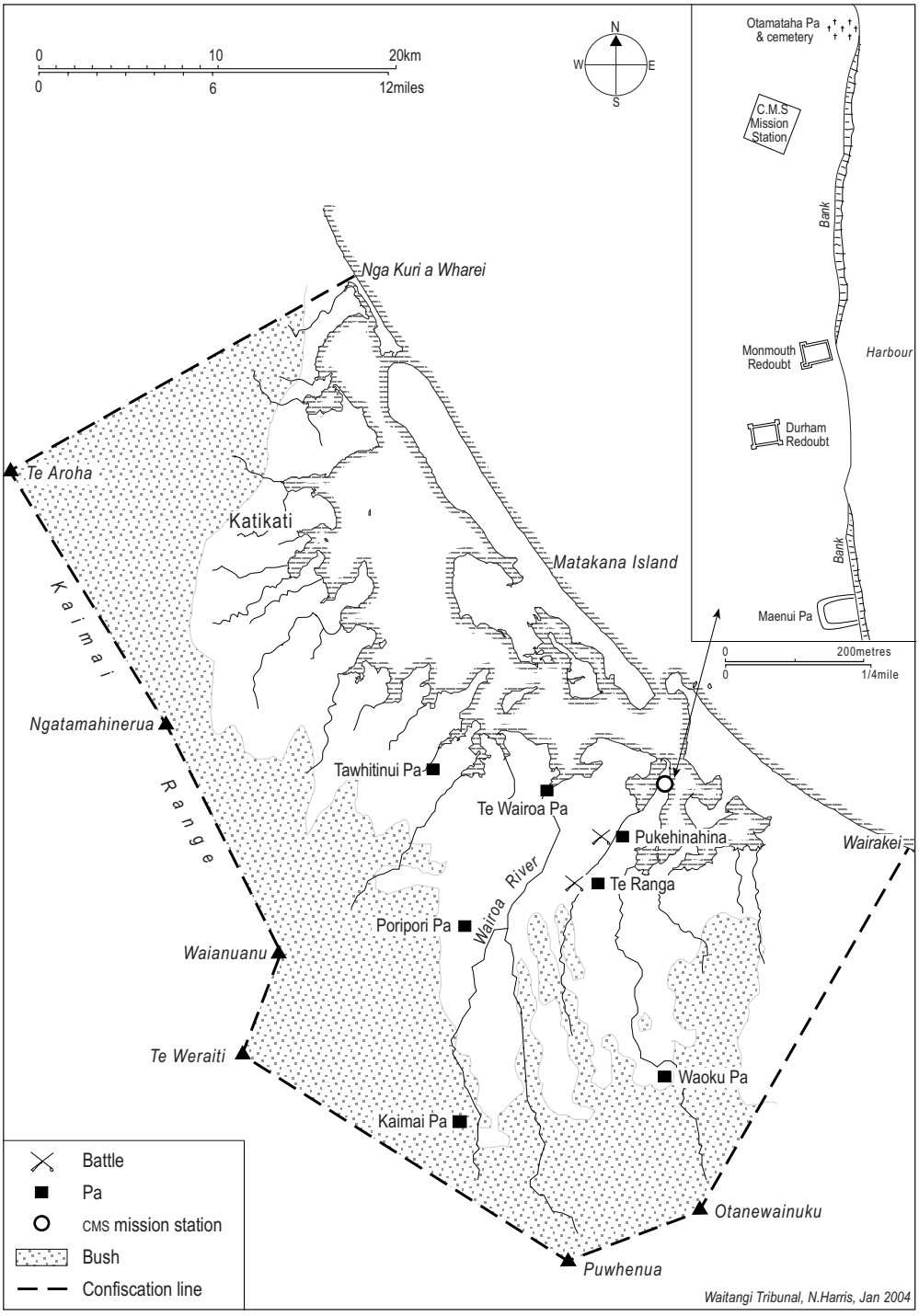
30. Grey, 'Memorandum Concurring in the Proposed Expedition', 19 January 1864, AJHR, 1864, E-2, p 8
31. Whitaker, 'Memorandum . . as to Instructions to be Given to Tauranga Expedition', 19 January 1864, AJHR, 1864, E-2, p 8
32. Ibid
33. Document A2, p 47

The arrival of the troops caused some alarm, and not merely among Maori. Within 24 hours of the British landing, Civil Commissioner Smith was informed by Carey of his instruction to seize the crops and cattle of Maori on the western shores of the harbour. Smith told Carey that this action would injure 'many innocent persons' and that it would 'increase the number of the disaffected', 'precipitate hostilities', and 'induce other tribes to take up arms who might otherwise remain quiet'.[34] Smith believed that to divide Tauranga Maori into two factions along an east–west divide was unduly simplistic. Indeed, he was so alarmed about the proposal that he sent circular letters around the district assuring Maori that the object of the expedition was 'to act as a check on the movement of Waikato sympathisers'. He further wrote that, unless forced upon the troops, 'active hostilities are not contemplated, and in any case will only be carried out against open rebels'.[35] Smith pleaded with Fox, the Native Minister, to modify Carey's instructions accordingly. For his trouble, Smith was severely reprimanded, both because he revealed too much information to Maori and because he interfered with Carey's instructions. Indeed, according to Shortland, Fox believed that Smith himself had previously informed the Ministers that Maori on the west side of the harbour were 'almost to a man committed in the Rebellion; that the greater part of them had actually been fighting in Waikato; that they were in fact W Thompson's people, and the district in which they lived practically under his direct influence'.[36] In fact, Smith's information showed that 230 of the 330 adult males from the western side of the harbour (approximately 70 per cent) had joined the Waikato fighting.[37] Smith was instructed to carry out a new survey of individuals and hapu that had been involved in the Waikato war and that had hoisted the King's flag at their villages, or otherwise become involved in the 'rebellion'.

The new survey, eventually completed in February, showed that 169 of 253 adult males of the western district (67 per cent) had joined the fighting in the Waikato; this figure was slightly smaller than Smith's earlier estimate. On the eastern side of the harbour, only 34 out of 238 adult males had gone to the Waikato. Another 30 out of an adult male population of 80 from the offshore islands had also gone. We noted the hapu allegiances of those in Smith's first survey above. Although the second survey was presumably a more accurate return than the earlier one, Smith still received no thanks for his efforts. Fox's secretary told him bluntly that the new information did not justify his earlier interference with Carey's instructions and conveyed nothing that the Ministers were not aware of when they gave Carey those instructions.[38] But Grey did praise Smith for informing him (through Carey) of his error in:

> treating all the Natives on the western side of the Harbour of Tauranga, as enemies, seizing their crops, cattle, &c. I feel very much obliged to you for the fearless and honourable way in

34. Smith to Carey, 22 January 1864, AJHR, 1864, E-2, p 9
35. Smith to Colonial Secretary, 22 January 1864, AJHR, 1864, E-2, pp 8–9
36. Shortland to Smith, 25 January 1864, AJHR, 1864, E-2, p 10
37. Smith to Fox, 11 February 1864, AJHR, 1864, E-2, p 14
38. Shortland to Smith, 22 February 1864, AJHR, 1864, E-2, pp 14–15



Map 10: Tauranga, 1864

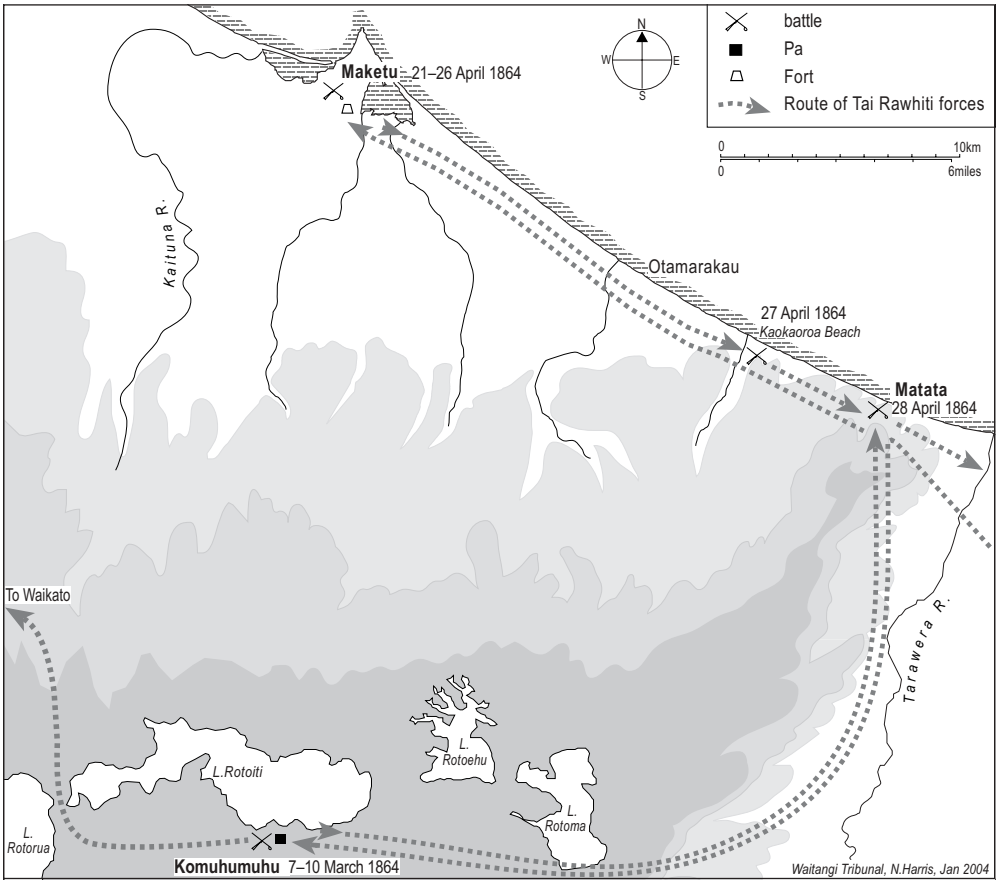
which you did your duty on this occasion, thereby preventing me from being the cause of bringing misery upon many innocent people.[39]

However, in praising Smith in this way, Grey revealed the continuing friction between him and his Ministers.

Smith's contradictory instructions from the Governor and his Ministers were a foretaste of the way in which both sides attempted to use Native Department officials in their disputes over Tauranga. In this instance, Grey appears to have been the winner. After reading Smith's letter, he instructed Carey that he was 'not to adopt any aggressive movement against any Natives', and not to 'seize the cattle, or destroy the crops, of any Natives, whom you are not satisfied are open enemies', but merely to intercept armed parties passing through Tauranga to the Waikato front.[40]

For their part, Tauranga Maori viewed the arrival of troops at Te Papa with suspicion. Although a blockade was imposed to stop the movement of hostile men and materials, normal commercial traffic across the harbour continued, and Maori on the eastern side soon found the troops to be a ready market for their produce.[41] Nevertheless, there was much unease as each side tried to ascertain the intentions of the other. Battersby, who consulted the journals and correspondence of some military officers such as Carey, found several letters from Maori seeking information on the plans of the military force. Henare Taratoa wrote to Carey on 9 February, saying that he was 'searching for the reason why the soldiers were ordered here'.[42] Battersby noted from Carey's correspondence with Grey that Tamihana had advised Maori on the western side of the harbour to 'sit still & not to fight'.[43] But other letters from Maori sympathetic to the Crown, as well as Auckland newspaper reports, relayed rumours of impending attacks by hostile Maori.[44] Though none of these attacks eventuated, there was growing tension in Tauranga in the three months between the landing of the troops at Te Papa and their assault on Pukehinahina. The troops may have refrained from plundering Maori crops, but their regular patrols outside the Durham and Monmouth redoubts, reconnaissance of Maori pa, shooting practices, and shooting of wildfowl near local kainga led Maori to fear that they would be attacked.[45] Yet, so long as the troops remained on the CMS block, which Tauranga Maori considered Pakeha had the right to occupy, they were not attacked.[46]

39. Grey to Smith, 25 January 1864, AJHR, 1864, E-2, p 11
40. Grey to Carey, 25 January 1864, AJHR, 1864, E-2, p 11
41. Document M9, p 82
42. Taratoa to Carey, 9 February 1864, G16/3, 14, quoted in translation, Mary Drydon, August 2001, transcript 2 (doc M9, p 84)
43. Carey to Grey, 1 February 1864, G16/3, no 10, 'Official', ArchNZ (doc M9, p 84)
44. Document M9, pp 82–85
45. Ibid, pp 86–88
46. Ibid, p 94



Map 11: Route of Te Tai Rawhiti forces

With the return of Tauranga Maori who had fought in the Waikato, the defence of Tauranga Moana came under the control of experienced campaigners who were well used to British battle tactics and modes of fighting. James Belich described the Maori leadership in Tauranga after the arrival of Carey's force as pursuing a military policy 'tactically defensive but strategically offensive'.[47] They attempted to draw the British out from their camp at Te Papa by issuing challenges and inviting assaults on the various pa they had fortified outside the CMS block. Initially, they tried to draw the troops to the ancient Waoku Pa, on the bush margin overlooking the Waimapu River 16 kilometres inland from the CMS mission. Pirirakau and others also occupied pa sites at Kaimai, Poripori, Wairoa, and Tawhitinui, in another attempt to draw the British forces into broken country in the hinterland where Maori would have the advantage.

The troops at Te Papa were still intent on stifling the flow of men from the east through Tauranga to the Waikato. A force of some 140 men, mainly from Tuhoe, Ngati Whare, and Ngati Kahungungu, had already got through to the front, where they fought at Hairini and,

47. Belich, p 177

Fig 4: *Taratoa, Lay Preacher. Killed at Te Ranga, 21st June 1864.* Watercolour by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (A-033–011).

most conspicuously, at Orakau. After the latter encounter, however, the focus changed from stopping fighting forces reaching the Waikato via Tauranga to preventing them from reaching Tauranga in the first place.[48]

In March, 200 troops were sent to Maketu, where they established a fort. Their objective was to block the passage to the front of a taua of some 700 to 800 Te Tai Rawhiti warriors that had reached Matata in January. There, the group was halted by Te Arawa hapu that had remained loyal to the Crown. So the taua turned inland and, between 7 and 10 March, fought Te Arawa at the Rotoiti pa of Komuhumuhu. A truce was declared and the Te Tai Rawhiti warriors retreated to the coast east of Maketu, where they were reinforced by Ngati Porou, Tuhoe, Ngati Tama, and the coastal Arawa hapu, Ngati Makino. On 21 April, British troops stationed at Fort Maketu exchanged fire with an advance party of the Te Tai Rawhiti taua. Cameron, who had arrived at Tauranga that day, sent extra troops.[49] A stalemate persisted until the morning of 27 April, when Arawa troops arrived and the warships *Esk*, *Falcon*, and *Miranda*, along with the steamer *Sandfly*, began to shell the taua from offshore. The taua retreated along the coast, under fire from the ships and pursued by a land force of regular troops, supported by Forest Rangers and Te Arawa. After several minor engagements, the taua was decimated on the beach at Kaokaoroa. The survivors were pursued beyond the Tarawera River,[50] but there was no question of them proceeding to a Waikato – or Tauranga – front. After the defeat of the Waikato force and its allies at Orakau in early April, Cameron and Grey decided to

48. Document M9, pp 102–103
49. Ibid, pp 99–100, 102
50. Jenkins to Wiseman, 27 April 1864, AJHR, 1864, E-3, p 68

redirect to Tauranga troops that were originally intended for Taranaki.[51] By the time fighting broke out at Tauranga, Cameron was commanding about 1700 troops there, and the victory over the Te Tai Rawhiti taua gave him a golden opportunity to finish off any resistance among Tauranga Maori without fear of intervention by outside forces.

Many Tauranga Maori had long been expecting to have to fight in defence of their land. The experienced Kingitanga commander Te Moananui had strengthened Tawhitinui Pa, which was situated inland from Te Puna, in the hope of drawing the imperial troops out from the safety of Te Papa. When no such response was forthcoming, a series of challenges taunting the British to engage was issued during March and April. Largely rhetorical in nature, and often made in response to British demands, these challenges resembled the wero traditionally issued on a marae to test the intentions of the manuhiri. When Colonel Henry Greer, who had replaced Carey, called for Ngai Te Rangi to cease their hostilities and surrender their weapons, Rawiri Puhirake replied: 'E kore au e whakaae kia hoatu aku pu; engari ka aea atu koe a ka parakuihi au ki Te Papa' ('I cannot consent to give up my guns, but if you so wish I shall take breakfast with you in Te Papa'). As Cowan described it, this 'was Rawiri's half-jocular way of announcing his intention of attacking the British camp'.[52] In fact, he did not do so.

Another challenge to the British came in the form of a set of rules for combat, which were issued in expectation of an engagement at Waoku. Generally attributed to Henare Taratoa of Ngati Raukawa, who had been educated at Saint John's College in Auckland, these rules were remarkably similar to the Geneva Convention, which was signed between the major Western powers that same year with the aim of facilitating the work of the International Red Cross:

> Poteriwhi District of Tauranga, March 28, 1864
>
> To the Colonel, —
>
> Friend, salutations to you. The end of that, friend, do you give heed to our laws for (regulating) the fight.
>
> Rule 1. If wounded or (captured) whole, and the butt of the musket or hilt of the sword be turned to me (he) will be saved.
>
> Rule 2. If any Pakeha, being a soldier by name, shall be travelling unarmed and meet me, he will be captured, and handed over to the directors of the law.
>
> Rule 3. The soldier who flees, being carried away by his fears, and goes to the house of the priest with his gun (even though carrying arms) will be saved; I will not go there.
>
> Rule 4. The unarmed Pakeha, women, and children, will be spared.
>
> The end. These are binding laws for Tauranga.

51. Document M9, p 103
52. James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period, 1845–1864*, 2 vols (Wellington: Government Printer, 1983), vol 1, p 425

> By Terea Puimanuka, Wi Kotiro, Pine Anopu, Kereti, Pateriki, Or rather by all the Catholics at Tauranga.[53]

Grey forwarded a copy of these rules to the Duke of Newcastle, noting that they departed from traditional Maori custom, whereby 'If any families were in their belief wrongfully deprived of land by others stronger than themselves . . . they sought revenge in sudden murders before they totally abandoned the soil.' According to Grey, the rules demonstrated that 'a feeling much more in consonance with the teachings of Christianity is now springing up amongst many of the natives'.[54]

Claimant witness Kihi Ngatai, giving evidence on behalf of Ngati Hangarau, commented on these rules. Although he acknowledged that the second, third, and fourth rules showed the 'importance of Christian beliefs to my ancestors', regarding the first rule he stated in translation that it was 'from the Maori world':

> Even today, if a gift of a traditional weapon is made with the butt or hilt facing the giver, then everybody knows that the gift is to be returned in due course. So it was to be with the Pakeha wounded. It showed that the Tauranga people were willing to give their Pakeha enemy the gift of life if the enemy acted according to tikanga Maori.[55]

With no response forthcoming, Puhirake issued a further challenge, inviting the British to use the 12 kilometres of road his men had constructed so that their troops would arrive fresh and ready to fight. Puhirake then moved his forces even closer to Te Papa, occupying Poteriwihi Pa on the Wairoa River, and from there he issued yet another invitation to the British to come forward and engage, but still to no avail. Several other challenges were subsequently made, including a show of force on 2 April, when, according to Greer's report, about 200 or 300 Maori assembled and began firing on the Durham redoubt from the Judea side of the estuary, some 2000 to 3000 yards away. This distance was so great, however, that, according to Greer, the shooting could have no effect: 'I suppose they meant it in fulfilment of their challenge, as much as to say 'here we are if you want to fight us' & their position was far from a bad one, under cover themselves they could have inflicted considerable loss on any body of men crossing the ford.'[56] Greer did not accept the invitation to fight, but he eventually ordered the firing of an Armstrong shell, which ended the Maori shooting. A week later, according to the *Daily Southern Cross*, troops were again fired on by Maori. On that occasion, the sentries were able to disperse the attackers, apparently wounding one man.[57]

---

53. Grey to Duke of Newcastle, no 34, 5 April 1864, AJHR, 1864, E-3, p 47 (doc A2, pp 21–22). It appears possible that more than one version of the rules of conduct were circulated, although differences between the known copies may be attributable to errors of transcription.

54. 'Translation of Terea Puimanuka and Others to the Colonel', 28 March 1864; Grey to Duke of Newcastle, 5 April 1864, AJHR, 1864, E-3, p 47 (doc A2, pp 21–22)

55. Document D24(a), p 16

56. Greer to Grey, 3 April 1864, GNZ MSS84(25), APL (doc M9, p 89)

57. *Daily Southern Cross*, 12 April 1864 (doc M9, pp 89–90)

Another incident was recounted many years later by Hori Ngatai:

> For some time we waited for a reply to our challenges, but none came . . . We could not understand them making no move of any sort. We became impatient and it was decided to attack the soldiers' camp at Te Papa. Our party started out one night and selected men from other detachments who joined us at Kopurererua. Just as they were starting a gun accidentally exploded, wounding one of our men and giving the alarm, so we abandoned the attack and returned to our quarters.[58]

Frustrated by the reluctance of the British to engage fully, Tauranga Maori made a further provocative move towards Te Papa, this time by fortifying Pukehinahina, or Gate Pa, which lay within three miles of the British headquarters. This action virtually sealed off land access to the peninsula and severely restricted the ability of the British troops to patrol the hinterland. But the new fortification was vulnerable, as Cameron soon realised. Belich pointed out that the Maori force then assembled was within easy reach of the harbour and that 'Cameron could concentrate as many men and guns against it as he thought necessary – without the problems of transport and supply that had bedevilled him in the Waikato'.[59]

Cameron was by then intent on a full-scale attack on the new Maori position. He hoped to conclude the war at Tauranga and destroy the last remaining allies of the King with a battle as decisive as that at Orakau. After that engagement, both Cameron and the Ministers had quickly realised that there would be no more fighting in the Waikato proper.[60] That fact, together with the decision to send troops that had fought at Orakau to Tauranga, instead of Taranaki, and the decimation of the Te Tai Rawhiti taua at Kaokaoroa, meant that Cameron could turn his attention to the newly constructed Pukehinahina Pa, safe in the knowledge that Tauranga Maori would get no outside support and that he would not be distracted by fighting elsewhere. On 29 April, two days after the rout at Kaokaoroa, Cameron assaulted Pukehinahina.

4.4 The Battle of Pukehinahina, 29 April 1864

Pukehinahina is on a ridge near the base of the Te Papa Peninsula and is bounded by two arms of the harbour: the Waimapu Estuary and the swampy lower reaches of the Kopurererua Stream. The pa was built on Maori land just outside the southern boundary of the second (and larger) CMS purchase of 1839. In an early dispute over the legitimacy of the purchase, Maori constructed a post and rail fence to block the passage of Europeans inland. Following

58. Gilbert Mair, *The Story of Gate Pa, April 29th, 1864* (Tauranga: Bay of Plenty Times, 1937), p 23 (doc M9, p 90)
59. Belich, pp 176, 178
60. For example, Fox wrote that, three weeks after the battle, 'the final blow was struck in Waikato by the capture of Orakau and the evacuation of Maungatautari': Fox, 'Memorandum by Ministers in Reply to Aborigines Protection Society', 5 May 1864, AJHR, 1864, E-2, p 19.

Fig 5: *Earthworks and Fence of the Gate Pa Looking East from the Breach. Early Morn, 30 April, 1864.*
Pen and wash drawing by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (A-033-009).

negotiations, a gate was built into the fence, and it was this gate which gave the ridge-top pa its name: Gate Pa. The chosen site was therefore the ultimate challenge: if the British were to attack Tauranga Maori, they must do so on Maori land, though that was not the only difficulty facing them.

To fortify the pa, a ditch and embankment were constructed parallel to the fence. The outer palisades were made from manuka and tupakihi and were reinforced at key points with posts and rails plundered from stockyards and fences. To all outward appearances, the barrier was very flimsy; as Ensign Nicholl of the 43rd Regiment wrote, 'The Pah from the outside looks the most insignificant place.'[61] In fact, Pukehinahina was a fine example of the high level of military engineering developed by Maori at this late stage of the war – it had been designed by the military engineer Pene Taka as a complex maze of covered walkways and underground shelters, all roofed with alternate layers of soil and bracken to absorb the shock of bombardment. According to Cowan, the main part of the pa was garrisoned by some 200 warriors, mostly from hapu of Ngai Te Rangi, under the command of Puhirake. A smaller western part

61. Ensign Nicholl of the 43rd Regiment, diary, 29 April 1864, p 206 (as quoted in Belich, p 181)

Fig 6: Gate Pa, Pukehinahina Ridge, during the New Zealand wars, circa 1864. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (PA1-f-046-13-3).

was garrisoned by some 30 to 40 men, including 25 Pirirakau and a small party of Koheriki from Maraetai.[62] Most of the men in the pa had seen action in the Waikato; some of the Pirirakau may even have taken part in the fighting in Taranaki earlier in the decade.[63] Philip Putnam, a British soldier present at Tauranga, later recalled that 'all the hapu [of Tauranga] excepting two were present against us viz Nga Potiki and Ngati He who were living at Otawa some distance inland'.[64] Cowan wrote that, as well as the men, the women of the hapu who were present 'toiled in the building of the fort, but . . . were sent safely away to the villages in the rear, by Rawiri's order, before the fighting began'. The only exception was Heni te Kirikaramu (Jane Foley) who was with the Koheriki taua.[65]

On 27 April, Cameron began to assemble his troops within sight of Pukehinahina. The British force included elite light infantry and naval brigades, and totalled 1689 men.[66] They were armed with Enfield rifles, firing the expanding Minie bullet,[67] and were supported by a formidable arsenal of artillery arrayed on the British warships moored off the peninsula. This included a 110-pounder Armstrong gun, two 40-pounder and two six-pounder Armstrongs, two 24-pounder howitzers, two eight-inch mortars, and six Coehorn mortars.[68]

62. James Cowan, p 423
63. '[A]ll of Pirirakau took up arms and took part in the fight at Gate Pah': see doc A47, p 54.
64. Mair, p 12
65. Cowan, p 423
66. Document A2, p 24. According to Cowan's estimates, the British force was 'made up of a Naval Brigade of about 420, fifty Royal Artillery, 300 of the 43rd Regiment, and 700 of the 68th, besides 180 of a moveable column consisting of detachments of the 12th, 14th, 40th, and 65th regiments': see Cowan, p 425.
67. Belich, p 22
68. Cowan, p 425

At low tide on the night of 28 April, Cameron sent Greer and the 68th Regiment around the western side of the peninsula to take up a position to the rear of the pa, apparently cutting off the main avenue of escape as well as the pa's water supply. The following morning, Cameron began an artillery barrage directed mainly at the western end of the main pa, the part best suited to an assault. During the middle of the day, at least one six-pounder Armstrong gun was hauled across the Kopurererua Swamp to high ground, from where it was able to enfilade the western outer works of the pa, forcing their abandonment. According to Belich's estimate, in all, 'perhaps thirty tons of shot and shell were dropped on or near the Maori position' that day.[69]

By the late afternoon, a breach had been forced in the palisade and there was little sign of continued resistance from within the pa. Cameron ordered an assault by 300 elite troops comprised of equal numbers of the naval brigade and the 43rd Light Infantry Regiment. More troops followed in their wake, so that altogether some 800 men were involved in the assault.[70] While other elements of the British force kept up a heavy fire on the pa, Cameron later recounted, the assault party 'gained the breach with little loss, and effected an entrance into the main body of the work'.[71] What ensued has been given various hues, depending on the source, but it appears that, on entering the confined space within the palisades, the troops became confused as a barrage of fire erupted from Maori hidden in rifle pits and trenches. After the first officers and men fell, the remainder panicked. According to Belich, the British troops had fallen into an elaborately laid trap and were caught in volleys of fire at short range.[72] In the ensuing rout, the British force suffered 111 casualties, with 10 officers and 21 others killed or later dying of wounds, while only about 25 Maori were killed in the bombardment and in the engagement within the pa.[73] Cameron's troops had suffered what *The Times* of London called a defeat 'perhaps unparalleled in the British military annals'.[74]

In his account of the battle, given many years later to Gilbert Mair, Hori Ngatai recalled that the Maori casualties numbered:

> about 25 men killed, including the following:—Petarika Te Reweti Manatini (taken next day to Te Papa, where he died), Eru Puhirake, Te Kani, Reka Tamatea, Ihaka, Te Wano, Te Rauhuhu, Tikuhu, Te Rangitau, Te Kani Te Wharepouri, and Parawai. We Heti was both bayonetted and shot but got away, also Hone Taharangi and Te Moananui, the latter with gunshot wounds.[75]

69. Belich, pp 181–183
70. Ibid, pp 183–184
71. Cameron, AJHR, 1864, E-3 (doc A2, p 25)
72. Belich, pp 185–186
73. Cowan, p 433
74. *The Times*, 14 July 1864 (as quoted in Belich, p 180)
75. Gilbert Mair, 1937, p 28 (doc A2, p 33)

Fig 7: *The War in New Zealand – Storming the Rifle Pits at Te Ranga, June 21, 1864* Drawing by Nicholas Chevalier from a sketch by G Lewis. Engraving by Samuel Calvert. Reproduced courtesy of the Alexander Turnbull Library (PUBL-0060).

After nightfall, the Maori defenders discreetly withdrew, as they had done so often in Taranaki and the Waikato. When the British entered the pa the following morning, they found several wounded soldiers, who, 'to the credit of the natives, had not been maltreated; nor had any of the bodies of the dead been mutilated'.[76] Taratoa's code of conduct had been honoured and, in keeping with that, the sole woman present, Heni Te Kirikaramu, had given water to Colonel Booth and other wounded British troops.

In his official report, Cameron described the defeat as a 'repulse', which he was 'at a loss to explain otherwise than by attributing it to the confusion created among the men by the intricate nature of the interior defences, and the sudden fall of so many of their officers'.[77] The British officers who inspected the pa the next morning soon became aware of its involved structure. Although the defences were also described by Cowan, it was not until the publication of Belich's *The New Zealand Wars* in 1986 that the significance of the Maori military engineering was fully explained.

76. Cameron to Grey, 5 May 1864, AJHR, 1864, E-3, p 61
77. Ibid

4.5 The Battle of Te Ranga, 21 June 1864

In the period immediately after Pukehinahina, the British worked to consolidate their hold over the district; the pa was reconstructed as a redoubt, another small redoubt was built at Judea, and abandoned pa along the Wairoa River were occupied by troops. Regular detachments of upwards of 600 men were sent out from Te Papa, the soldiers eager to engage Maori in the open and thus avenge the debacle of 29 April.[78] But Grey and even Cameron were keen to swallow their pride and work for peace. Grey visited Tauranga on 12 May, conferred with Cameron, and shortly afterwards met with some neutral Maori, who agreed to act as intermediaries with the Tauranga Kingitanga and negotiate a peace, though only a few of those who had fought at Pukehinahina were prepared to surrender. On 15 May, Cameron informed Grey that he intended to 'abandon aggressive operations in Tauranga' and withdraw the bulk of his troops to Auckland. The next day, he departed with 700 troops, leaving instructions for more to follow. Greer remained behind with the rest of the troops, numbering some 800 or 900, with orders to hold Te Papa Peninsula.[79]

With their mana enhanced by their victory at Pukehinahina, Tauranga Maori were reluctant to lay down their arms, and their success also encouraged a new Te Tai Rawhiti force to enter the fray. A taua of Ngati Porou headed by Hoera Te Mataatai was supplemented by fighters from the Te Arawa hapu of Ngati Rangiwewehi and Ngati Pikiao, and by some Whakatohea.[80] On 21 June, while on a reconnaissance tour some five kilometres inland from Pukehinahina, Greer and some 600 troops came across approximately 500 Maori constructing a new pa at Te Ranga. Although it has usually been assumed that this Maori force constituted the cream of Ngai Te Rangi who had been victorious at Pukehinahina, Belich argued that their contingent probably numbered fewer than 100, with the bulk of the group made up of the new Te Tai Rawhiti force.[81] Oral accounts of Tauranga Maori, presented to us in claimant evidence, also recorded the presence of Ngati Porou and Tuhoe at the time.[82] However, the combined force was again led by Puhirake of Ngai Te Rangi.

According to Greer, the Maori force 'had made a single line of rifle-pits of the usual form across the road'. Realising that the pa was only partly completed and that its defenders were vulnerable, Greer called for reinforcements from Te Papa and opened fire. He later reported his action as follows:

> Having driven in some skirmishers they had thrown out, I extended the 43rd and a portion of the 68th in their front and on their flanks as far as practicable, and kept up a sharp fire for about two hours while I sent back for reinforcements . . . As soon as they were sufficiently near to support, I sounded the advance, when the 43rd, 68th and 1st Waikato Militia charged,

78. Belich, pp 188–192
79. Ibid, pp 188–189
80. Document A2, p 34; Cowan, p 435
81. Belich, p 189
82. Document D24(a), p 14

> and carried the rifle-pits in the most dashing manner, under a tremendous fire, but which was for the most part too high. For a few minutes the Maoris fought desperately, when they were utterly routed. 68 were killed in the rifle-pits.[83]

Although the situation appeared hopeless, Puhirake seems to have decided to stand and fight because he thought that reinforcements, led by Taraia Ngakuti of Ngati Tamatera, were in the vicinity. But no support arrived, and when Puhirake was killed, his remaining men broke and fled.[84] As Greer noted, by then they had already suffered heavy casualties.

In addition to the figures quoted above, there have been various other estimates of the Maori casualties. Greer himself gave another account of the dead, saying that 108 Maori were buried where they fell at Te Ranga[85] and that another 14 later died of their wounds and were buried in the CMS cemetery at Te Papa. Resident Magistrate William Baker estimated that 105 were killed and 37 taken prisoner, including 27 wounded, and Cowan produced figures of 120 killed and 27 wounded.[86] However, Belich argued that the Maori casualties were exaggerated by the British and opted for 68 – the number he said were found dead at Te Ranga – suggesting that the higher figures were based on the mistaken inclusion of prisoners, most of whom were wounded.[87] Whatever the true figures, there is no doubt that Tauranga Maori and their allies had suffered a heavy defeat, with the number killed considerably higher than the number of British troops killed at Pukehinahina. Among those killed was Henare Taratoa, who had also fought at Pukehinahina and had authored the proposed terms of engagement discussed above.[88] On the other hand, British casualties at Te Ranga were low. Greer listed nine men killed, and six officers and 33 enlisted men wounded.[89]

As a victory for the British, Te Ranga served to assuage the bitter defeat of Pukehinahina. But for Cameron it was merely another end to the Waikato campaign, and he had no interest in continuing to fight in Tauranga. However, the victory was not enough to satisfy the Ministers, who wanted Cameron to follow it up with further campaigns in the hope that it might 'lead to the submission of the rebels of that district'.[90] Cameron was unwilling to carry out their wishes, telling Grey: 'There is no reason to hope that any such decisive result as that anticipated by Ministers, or that any real advantage whatever, would be obtained by following them [the Tauranga Kingitanga] into the interior.'[91] Grey, like Cameron, suspected that Whitaker wanted to continue the war in Tauranga in order to justify the inclusion of the district in his proposed Waikato confiscation and to provide confiscated land for one of the

83. Greer to deputy quarter-master general, 21 June 1864, AJHR, 1864, E-3, pp 74–75
84. Belich, p 190
85. Greer to Cameron, 27 June 1864, AJHR, 1864, E-3, p 77
86. William Baker, resident magistrate, 21 June 1864, AJHR, 1864, E-3, p 75 (doc A2, p 31); Cowan, p 466
87. Belich, p 193
88. Baker, memorandum, 21 June 1864, AJHR, 1864, E-3, p 75 (doc A2, p 34)
89. Greer to deputy quarter-master general, 21 June 1864, AJHR, 1864, E-3, p 74
90. Whitaker to Grey, dispatch, 27 June 1864, AJHR, 1864, E-2, p 69
91. Cameron to Grey, 2 July 1864, select dispatch, pp 269–270 (as quoted in Belich, p 194)

Waikato regiments of military settlers. Grey told Cameron that he was 'unaware that it was intended by Ministers to permanently occupy Tauranga with one of the Waikato Regiments', and referred to his memorandum of 19 January 1864, written immediately before Colonel Carey's arrival, in which he had 'reluctantly' agreed to an expedition of a 'temporary character'.[92] At the end of July, Grey told his Ministers that if military settlers were to be sent to Tauranga they should be 'neither directly or indirectly led to believe that land will be provided for their location there'. He was 'not at present satisfied that it will be practicable to obtain land for a settlement there of such an extent, and on such conditions as appear to be contemplated'.[93] We discuss the proposed military settlement and confiscation at Tauranga in the next two chapters.

4.6 Claimant and Crown Submissions

4.6.1 Claimant submissions

Because all claimant counsel made similar submissions to the Tribunal on the Tauranga campaign, we discuss them here in general terms, rather than claim by claim. We also concentrate on counsel's closing submissions and subsequent submissions in reply to the Crown, because these provided the most distilled statement of the claimants' positions.

The essence of the various claimant counsel's extensive submissions is that the behaviour of Tauranga Maori provided no basis for the Crown's attacks at Pukehinahina and Te Ranga and its subsequent confiscation of land.[94] The combined closing submissions made by Messrs Harvey, Webster, and Clarke (which we refer to as the joint submission) argued that the Crown breached the Treaty when it:

- levied war against Tauranga Maori without justification and killed and wounded members of the Tauranga iwi in breach of its kawanatanga obligations; and
- sought to defeat, by military force, the rangatiratanga of the Tauranga iwi and to negate the exclusive and undisturbed possession of their lands, estates, forests, fisheries, and taonga, which were solemnly guaranteed to them by article 2 of the Treaty.[95]

Several claimant counsel argued that the hostilities in Tauranga needed to be understood in the wider context of the New Zealand wars, and they detailed the involvement of Tauranga Maori in the Taranaki and Waikato conflicts.[96] In the joint submission, counsel argued that Tauranga Maori were obliged to participate in the defence of the Waikato because of their

92. Grey, memorandum to Government House, 5 July 1864, AJHR, 1864, E-2, p 62
93. Grey, 'Ministerial Memorandum', 30 July 1864, AJHR, 1864, E-2, p 70
94. Document N3, pp 4, 7–10; doc N4, pp 13–16; doc N5, pp 3–5; doc N6, pp 9–12; doc N7, p 18; doc N8, pp 11–12; doc N9, pp 10–13; doc N10, pp 9–12; doc N11, pp 60–77; doc N12, pp 15–18; doc N22, p 8; doc N23, pp 20–21
95. Document N11, pp 74–77 (doc N11 was filed for the following claims: Wai 42(a), Wai 211, Wai 227, Wai 228, Wai 266, Wai 370, Wai 540, Wai 637, Wai 672, Wai 503, Wai 645, Wai 701, Wai 854, and Wai 938).
96. Document N6, pp 9–10; doc N9, p 10; doc N10, p 10; doc N11, pp 61–63; doc N23, p 16

kinship links and allegiance to the Kingitanga.[97] Claimant submissions also pointed to the lasting impact of the 'musket wars'. Emphasising the long-standing ties between Tauranga iwi and Ngati Haua, counsel quoted from a statement by Resident Magistrate Henry Clarke in 1862:

> The Tauranga natives owe a debt of gratitude to Te Waharoa (William Thompson's father) for . . . assistance rendered by himself and the tribe during the bloody conflict between the Tauranga and Arawa tribes; in fact it may be said that Te Waharoa saved them from annihilation.[98]

Counsel generally agreed that the assistance rendered to the Waikato by Tauranga Maori led to the Crown levying war against the latter.[99] Some counsel claimed that both the Domett and the Whitaker Ministries developed plans to invade and confiscate Tauranga land during 1863.[100] In the joint submission, counsel quoted from the *Daily Southern Cross* of April 1866 that 'Tauranga . . . contained a fine agricultural district, on which Mr Whitaker had set his eyes; and so Tauranga was invaded'.[101] Counsel noted that the attack on Maori at Tauranga came after the fighting in the Waikato proper had ended, and argued that this was evidence that the Crown's real intention in continuing the war at Tauranga was to provide a pretext for the confiscation that eventually followed.[102]

Those counsel who commented on the matter contended that British troops were sent to Tauranga to attack local Maori and, by fighting back, those Maori were acting in self-defence.[103] Counsel making the joint submission argued that Tauranga Maori perceived Carey's expedition as an attempt to 'seize their land' and that such views were justified, in light of what had happened elsewhere.[104] Local Maori could hardly believe assurances that the troops' intentions were defensive, especially when reinforcements began arriving.[105] The joint submission (and counsel for Pirirakau) argued that Tauranga Maori were not in rebellion by their participation in the Waikato and Tauranga battles. Counsel argued that, since the Crown conceded in the Waikato Raupatu Claims Settlement Act 1995 that Waikato Maori were unfairly labelled rebels, it would be inconsistent for the Crown to regard Tauranga Maori as being in rebellion by going to the aid of their Waikato kin.[106] It was therefore contended that there were no grounds for the Crown to regard the Treaty rights of Tauranga Maori as being suspended.

---

97. Document N11, p 61
98. Ibid, pp 65–66; doc A2, p 15
99. Document N11, p 66
100. Document N10, p 10; doc N11, pp 66–68; doc N23, p 17
101. *Daily Southern Cross*, April 1866 (doc A58, p 6)
102. Document N10, p 10; doc N23, pp 22–23
103. Document N4, p 41; doc N6, pp 9–10; doc N7, p 22; doc N8, p 11; doc N9, p 12; doc N11, p 70; doc N23, pp 19–20
104. Document N11, p 68
105. Ibid, p 69
106. Ibid, p 102; doc N9, p 11

Finally, we note counsel's arguments in relation to specific breaches of Treaty principles. In the joint submission, counsel cited previous Tribunal and court judgments to argue that the Crown's kawanatanga right was 'not unfettered' and needed to be exercised with respect for Maori tino rangatiratanga and article 2 rights. Counsel said that this 'fundamental exchange in the Treaty' gave rise to obligations for both parties that were 'akin to partnership'. The Crown breached its Treaty obligations by levying war on Tauranga Maori 'in their own rohe on their own land'. Since Tauranga Maori 'were not in rebellion', they were in the same position as Wiremu Kingi's people at Waitara, who had been subject to 'an unlawful attack' by forces of the Crown even though they were, in the words of the Taranaki Tribunal, 'not at that time in rebellion'.[107] Several other submissions of claimant counsel made similar points.[108]

While the claimants' submissions in reply to the Crown's closing submissions largely reiterated their earlier statements about the Tauranga battles,[109] some new arguments were made on the issue of rebellion.[110] In particular, several counsel submitted that it was of limited importance to the Tribunal whether Tauranga Maori were legally in rebellion, because the Tribunal's focus must be on whether any breaches of Treaty principle occurred.[111] It was also contended that the legal authorities relied on by the Crown in its submissions about rebellion were not appropriate to the context of Tauranga in the 1860s.[112]

4.6.2 Crown submissions

As with the claimant submissions, we summarise here the main points of the Crown's closing submissions on the war at Tauranga.

Crown counsel acknowledged that 'Ministers intended from about mid 1863 to take land in Tauranga for the purposes of military settlement' but noted Grey's reservations about the Ministers taking a 'hard line'. In any case, Crown counsel argued, some Tauranga Maori were already in rebellion before the battles of Pukehinahina and Te Ranga, and this was grounds enough for confiscation. Those Maori had 'taken up arms against the Crown in Waikato . . . The Government did not need to engage in hostilities with Maori on Tauranga soil to enable them to use the New Zealand Settlements Act there.'[113] More particularly, the Crown maintained that a state of rebellion existed in fact and in law in the centre of the North Island during the early 1860s. The Crown based its argument on definitions of treason made by two leading eighteenth- and nineteenth-century English jurists, William Hawkins and Sir William Blackstone.[114]

107. Document N11, pp 74–77
108. Document N10, pp 9–10; doc N23, pp 20–21; doc N3, pp 4, 9–10; doc N6, pp 9–11; doc N7, p 18
109. Document P4, pp 14–19; doc P7, pp 5–6; doc P8, pp 22–24
110. Document P2, pp 3–27; doc P3, pp 4–6; doc P4, pp 8–11; doc P6, p 6; doc P7, pp 4–5; doc P8, pp 15–17
111. Document P6, p 6; doc P8, p 15
112. Document P8, pp 15–16
113. Document O2, pp 26–27
114. Ibid, pp 14–20, 26

In light of the Crown's view of a pre-existing rebellion involving Tauranga Maori, it argued that 'the deployment of troops to Tauranga was a strategic decision taken by Cameron and the Crown in the wider context of the Waikato war'. Further, the Crown maintained that the deployment 'could not reasonably be termed an "invasion" in the ordinary sense of the word'. This was demonstrated by the defensive measures undertaken by Carey and by his refusal to respond to provocation from local Maori, who expected that the troops had come to fight them 'in retaliation for the support they had given their Waikato allies'. The Crown acknowledged that, when fired upon early in April, Carey's troops returned fire and apparently wounded one man. But the 'flashpoint' came, Crown counsel argued, when Maori constructed the Pukehinahina Pa, 'just outside the boundary fence surrounding the camp'.[115] In view of this, it was 'hardly unreasonable' for Grey and Cameron to send reinforcements to Tauranga. The battle of Gate Pa was fought, the Crown concluded, because 'Maori sought, and very deliberately provoked, an attack by Crown forces'.[116]

So far as later events are concerned, the Crown noted both Cameron's advice to Grey, after the battle of Pukehinahina, that no further offensive operations were needed at Tauranga, and Cameron's subsequent withdrawal of 700 troops. Further, Colonel Greer, who commanded the remaining troops, was to keep them in defensive positions, but to patrol in strength to prevent Maori from building pa in the vicinity of British redoubts. When one of Greer's patrols discovered Maori entrenching themselves at Te Ranga, he attacked. In the Crown's submission, relying on Belich's analysis, Te Ranga was not the crushing defeat for Tauranga Maori that the claimants asserted.

In the next three sections, we reach conclusions on a number of issues of historical interpretation (sec 4.7), discuss the legal question of rebellion (sec 4.8), and make findings by applying Treaty principles to our discussion of the war in Tauranga (sec 4.9).

4.7 Findings of Fact

4.7.1 The Waikato context

Both the claimants and the Crown agreed that the Tauranga war needs to be understood in the wider context of the Waikato war, but they disagreed over the interpretation of that context and, in particular, the issue of whether Tauranga Maori, by participating in the Waikato war, were in rebellion. We also agree that the Waikato context must be taken into account.

Many Tauranga Maori, although not a majority, felt obliged to go to the aid of Waikato Maori when the Crown invaded their district. We accept claimant counsel's argument that they did so because of kinship and historical obligations, especially to Ngati Haua, and because of their allegiance to the Kingitanga. It is probable that Tauranga Maori realised that

115. Document 02, pp 27–29
116. Ibid, pp 29–30

their participation in the Waikato war would bring imperial troops to Tauranga, especially in light of Grey's proclamation of 14 July 1863. When troops did arrive, in January 1864, ostensibly to cut off the supply of men and materials to the Waikato war, Tauranga Maori hurried home to defend their lands.

In terms of military strategy, the Tauranga war was a continuation of the Waikato war. We accept that the initial dispatch of Carey's force to Te Papa was a defensive move, being intended to halt the supply of men and provisions to the Waikato front. But we believe that this tactic was no longer necessary after Cameron's victory over the King's forces at Orakau on 2 April ended the war in the Waikato. It appears that, for Cameron, the Tauranga war was, as Belich put it, another 'British effort to secure a decisive victory'.[117] It was for this reason that he moved 1000 more troops to Tauranga by 27 April. On that day, operations were concluded against the Te Tai Rawhiti taua at Kaokaoroa, and since fighting had ended in the Waikato, the way was clear for a war in Tauranga. Two days later, Cameron seized the opportunity to assault Tauranga Maori in their pa at Pukehinahina. To him, it would have seemed the perfect opportunity to round off the Waikato war and destroy the last major undefeated support for the Kingitanga.

It is not sufficient, however, for us to consider the war in the Waikato and Tauranga solely in military terms. There was an important, if often confused and complicated, political context. As we have discussed at greater length in chapter 3, the Crown intended to break the authority of the Maori King, who it regarded as a threat to the Queen's sovereignty. The war was also intended to facilitate the Crown's policy of land confiscation. Confiscation was threatened in a proclamation that was backdated to precede the invasion of the Waikato and was subsequently implemented by the New Zealand Settlements Act 1863, which was passed while the Waikato campaign was in progress. The Act was also backdated to include rebellion since 1 January 1863, thus rendering Maori who had resisted the advance of Crown forces in the Waikato and Tauranga liable to have their land confiscated. We discuss the issue of rebellion below, and the implementation of confiscation in our next chapter. But, if war was the engine by which confiscation was effected, politics provided a guiding hand. The only trouble was that, during the Waikato and Tauranga campaigns, it was far from clear whether it was the Governor, his Ministers, or General Cameron who exercised political authority.

4.7.2 Responsibility for native affairs in Tauranga

Though Cameron's advice on military matters needed to be taken seriously, he did not have the final say. That responsibility rested with the Governor, who was officially commander-in-chief of the armed forces, though he in turn had to accept the advice of his Ministers. In section 4.2, we discussed the complicated process whereby responsibility for native affairs

117. Belich, p 133

was gradually transferred from the Governor to the settler Ministry. We noted, in particular, the long-running quarrel between Grey and the Whitaker Ministry. Although the latter accepted responsibility for native affairs when it took office in October 1863, it did so on the assumption that it could confiscate a large area of Maori land, raise an imperial loan, and secure that against the sale of much of the confiscated land. Well before troops were sent to Tauranga, the Ministry had set its mind on a confiscation line from there to Raglan. In our view, the Whitaker Ministry seized on Cameron's request for an expedition to Tauranga as an opportunity to secure the southern boundary of that confiscation. Even after Te Ranga, the Ministers assiduously promoted further military action to achieve their confiscation ambition. They proposed to settle one of the Waikato regiments of military settlers on part of the land confiscated at Tauranga. But, as we noted in section 4.2, Grey was suspicious of Whitaker's confiscation ambitions. He refused to sign the Order in Council that provided for the confiscations in the Waikato and Tauranga until after Whitaker and his Ministry resigned. We will explore the relationship between Grey and his Ministers further in subsequent chapters, when we discuss the confiscation.

4.7.3 The military occupation of Te Papa

Though there was some argument between claimant counsel and the Crown over whether Carey's initial occupation of Te Papa constituted 'an invasion', this matter was abandoned by claimant counsel in their joint closing submissions, when they merely said that the Crown 'deployed troops' to Tauranga.[118] In our view, for so long as Carey kept his troops on the defensive, his expedition did not constitute an invasion. But when Cameron proceeded to attack Pukehinahina, that most certainly did constitute an invasion.

More important, in our view, are the questions of whether Carey's occupation of Te Papa was provocative and whether it led directly to the assault on Pukehinahina. The evidence presented in section 4.3 suggests that the occupation was regarded as a threat by many Tauranga Maori, who saw it as the beginning of a contest on their home ground for their land – a *casus belli* that precipitated war. They therefore embarked on a policy that was, in Belich's words, 'tactically defensive but strategically offensive'.[119] However, their attempts to provoke the British into an attack were unsuccessful and Cameron attacked only when he was ready. As we have already said, Cameron pursued his campaign in Tauranga in the context of the wider conflict: he saw it as an opportunity to achieve a decisive victory. From the point of view of Tauranga Maori, on the other hand, the attack on Pukehinahina confirmed their fears about British intentions.

118. Document N11, p 66
119. Belich, p 177

4.7.4 The battles of Pukehinahina and Te Ranga

Pukehinahina was a stunning defeat for Cameron's formidable army: some 1700 troops were repulsed by a mere 200 Maori. But the Maori defenders evacuated the pa in the night and Cameron's men took control in the morning. Cameron was so disillusioned by the loss of many of his elite officers and men that he wanted to quit the Tauranga war. Indeed, soon after, he left for Auckland with a large proportion of his troops, leaving Greer in command.

The very fact that Pukehinahina was defended by a mere 200 men should caution us against any assumption that all Tauranga Maori – or even all Ngai Te Rangi – fought against the British at Pukehinahina. Though there is a tendency for all to share in retrospective glory, and to claim that some ancestors were there, it is clear that many hapu, particularly from the east, south, and west of the district, were not represented at the pa at all. Even hapu were divided: some Ngai Tukairangi were at Pukehinahina, while others acted as guides for the Crown forces (a matter that still causes some embarrassment today, as we found). Although Pirirakau were definitely represented in the defence of one wing of the pa, other Ngati Ranginui hapu do not appear to have been significantly represented. However, the battle did take place on Ngai Tamarawaho land, and their counsel named six men from the hapu who took part. She also reminded us that a kin group that still exists, Ngati Matepu, got its name from those who died from the guns at Pukehinahina.[120]

Te Ranga was a fortuitous victory for the British, who caught Ngai Te Rangi and their allies in an unprepared position and well and truly avenged Pukehinahina. We accept Belich's estimate that Ngai Te Rangi were a minority of those who fought at Te Ranga and that most of the others were from outside the district, though Ngai Te Rangi did provide the leadership and lost some of their finest chiefs. Nevertheless, the British victory at Te Ranga seemed to the colonial Ministers to have finally secured Tauranga for military settlement, though Whitaker wanted the campaign to be continued on both sides of the Kaimai Range to eliminate all possible opposition to his confiscation plan.

4.7.5 The aftermath

Adopting the view of claimant historian Dr Hazel Riseborough, some claimant counsel submitted that, in the negotiations that took place after the battles of Pukehinahina and Te Ranga, the position of Tauranga Maori was weakened by the deaths of their 'principal chiefs and most able negotiators'.[121] The loss of Puhirake and the others was certainly a blow to the leadership of Tauranga Maori, and reduced their capacity to wage war. However, we consider that there is insufficient evidence to make firm conclusions on the extent to which the deaths weakened the negotiating position of Tauranga Maori. We simply do not have available to us information on the number of Tauranga rangatira there were at the time, let alone details of

120. Document N23, pp 20–21
121. Document A23, p 13

their names and hapu affiliations. What is clear is that some prominent and able leaders who had sided with the King (such as Enoka, Tupaea, and Hori Ngatai) and many loyalist leaders (such as those who had attended Kohimarama) survived to lead Ngai Te Rangi in the peace negotiations that followed the Tauranga battles. We discuss their role in our next chapter.

4.8 The Law of Rebellion in 1860s New Zealand

In its submissions to us, the Crown maintained that a state of rebellion existed in fact and in law in the central North Island during the 1860s. Specifically, it argued that, by taking up arms against the Crown in the Waikato, some Tauranga Maori were already in a state of rebellion before imperial troops arrived at Te Papa in 1864, and that this in itself allowed the confiscation of land there under the New Zealand Settlements Act 1863. Rebellion is a concept defined by law, which makes it a question of law whether a group of people is in rebellion. The law also defines the adverse consequences that may befall rebels. The Tribunal is not a court of law, and so is not concerned primarily with legal questions and their answers. These matters are, however, often ancillary to our primary task of determining whether, in a particular situation, the conduct of the Crown was consistent with the principles of the Treaty of Waitangi and, if it was not, whether prejudice that should be remedied has been caused to Maori. The result is that the law's assessment of either Treaty partner's conduct does not answer the question whether, in all the circumstances, the Crown has acted consistently with Treaty principles. Such an assessment, however, is likely to be relevant to Treaty-based analyses. For that reason, we consider the legal question of rebellion here.

It is a common-law rule that English colonists take with them to a new land as much of their law as is appropriate to their new circumstances. That common-law rule was given a statutory basis in New Zealand in 1858 when the English Laws Act of that year declared that the laws of England, as they existed on 14 January 1840, 'shall, so far as applicable to the circumstances of the said Colony of New Zealand, be deemed and taken to have been in force therein on and after that day and shall continue to be applied in the administration of justice accordingly'.[122]

As we discuss further in chapter 5, the English law of rebellion was well developed by the mid-nineteenth century. In 1864, when the law officers of the Crown advised the Secretary of State for the Colonies on the validity of two New Zealand statutes dealing with rebellion, they explained that 'the Laws of England have repeatedly recognized the necessity for exceptional

122. The date given, 14 January 1840, was the date on which Governor Gipps issued a proclamation extending the boundaries of the colony of New South Wales to include New Zealand: see 'Copy of Dispatch from Governor Sir George Gipps to Lord John Russell', 9 February 1840, BPP, vol 1, pp 138, 141–142.

legislation, to suppress a rebellion threatening the existence of the State'.[123] The two New Zealand statutes under scrutiny were the Suppression of Rebellion Act 1863 and the New Zealand Settlements Act 1863. Neither Act contained a definition of 'rebellion', although both specified consequences that could befall people who were, or had been, engaged in rebellion.

The Suppression of Rebellion Act gave the Governor the effective power of martial law 'during the continuance' of 'the Rebellion which unhappily exists in this Colony'. It was a temporary measure, with a sunset clause providing that it would cease to be in force 'at the end of the next session of the General Assembly'.[124] The preamble to the Act explained that the 'acts of open Rebellion' to which it was directed were the product of 'a combination for the subversion of the authority of Her Majesty and Her Majesty's Government [that] has for some time existed amongst certain Aboriginal tribes of this Colony'. The preamble further stated that during the rebellion some of Her Majesty's subjects had been murdered or had their homesteads pillaged and their property destroyed, and it went on to say that 'the ordinary course of law is wholly inadequate for the suppression of the said Rebellion and the prompt and effectual punishment of those who are guilty of such atrocity and outrage'. Accordingly, the Act authorised the Governor to issue Orders in Council of the kind that would be authorised by martial law, during an emergency where military force and courts martial took the place of ordinary law and the courts.

In a report to the Taranaki Tribunal, Professor Frederic Brookfield explained that one difference between the common law's authorisation of martial law and the measures authorised by the Suppression of Rebellion Act was that the Act could be invoked in any part of New Zealand, including parts where peace prevailed and the courts could have maintained their regular civil and criminal jurisdiction. Another difference was that the Act severely limited the courts' common-law jurisdiction to check the excesses of martial law by reviewing the reasonableness of the measures taken to suppress the rebellion.[125]

The second Act to impose consequences for what its preamble described as 'the open rebellion against Her Majesty's authority' was the New Zealand Settlements Act 1863. We discuss this Act's provisions in more detail in chapter 6. It suffices to note here that the purpose of the Act, as stated in the long title, was 'to enable the Governor to establish Settlements for Colonization in the Northern Island of New Zealand'. The preamble added that it was necessary to prevent future rebellion and to establish law and order, and that the best means for doing that was 'the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country'. To those ends, the Act established a process by

123. Palmer to Collin, 14 May 1864, CO209/186 (as quoted in Ann Parsonson, 'The New Zealand Settlements Act 1863', report commissioned by the Waitangi Tribunal, 1993 (Wai 143 ROI, doc I22, p 74))

124. Suppression of Rebellion Act 1863, s 11. The Act ceased to have effect on 13 December 1864: see Frederic M Brookfield, 'Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu' report commissioned by the Waitangi Tribunal, 1996 (Wai 143 ROI, doc M19(a)), para 9.1.

125. Brookfield, paras 9.1–9.2

which the Government could confiscate land from North Island Maori tribes who had been engaged in rebellion and then use that land to establish military or other settlements.[126]

Crown counsel submitted that, at the time Tauranga Maori fought in the Waikato and then at Pukehinahina and Te Ranga, section 5 of the New Zealand Settlements Act provided 'a fair indication' of what constituted rebellion, and therefore who were rebels, according to New Zealand law.[127] The specific purpose of section 5 was to identify those who were not entitled to receive compensation for the taking of their land under other provisions of the Act, and it listed them as being anyone:

> (1) Who shall since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand or—
>
> (2) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or—
>
> (3) Who shall have counselled advised induced enticed persuaded or conspired with any person to make or levy war against Her Majesty or to carry arms against Her Majesty's Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or—
>
> (4) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or—
>
> (5) Who on being required by the Governor by proclamation to that effect in the *Government Gazette* to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.[128]

Section 2 of the Act authorised the taking of Maori land only where the Governor in Council was satisfied that a tribe or section of a tribe had been 'engaged in rebellion against Her Majesty's authority'. The Crown's submission, therefore, was that the concept of 'rebellion' referred to in section 2 of the New Zealand Settlements Act was, in effect, defined by the behaviours listed in section 5. In a general sense, that submission is undoubtedly correct. Brookfield made a similar point in his legal opinion to the Taranaki Tribunal in 1996 when he said that, in regard to 'rebellion', section 5(1) of the New Zealand Settlements Act 'does in

126. Section 2 empowered the Governor in Council to embark on the confiscation and settlement process whenever he was 'satisfied' that any tribe, section, or considerable number of a tribe had been engaged in rebellion after 1 January 1863. Brookfield concludes that, under the law of judicial review of administrative action, the basis of the Governor in Council's 'satisfaction' could be challenged in, and examined by, a superior court. While acknowledging that the courts are reluctant to invalidate administrative action taken in an emergency and authorised by a statutorily conferred discretion, Brookfield concludes that the Governor in Council's action would be invalidated in at least three situations: where there was no evidence at all of rebellion; where the evidence showed that Maori were acting in self-defence within the limits of the common law; and where the number of Maori involved in allegedly rebellious conduct was too small to constitute any conceivable threat to national security or public peace: Brookfield, paras 16.1–16.5.

127. Document 02, p 15

128. New Zealand Settlements Act 1863, s 5

effect provide a definition'.[129] Of the five subsections, section 5(1) identifies the most direct kind of behaviour involved in a rebellion: namely, 'levying or making war or carrying arms against Her Majesty the Queen or Her Majesty's Forces in New Zealand'.

Although it is implicit in section 5(1) of the New Zealand Settlements Act, an important matter that is not mentioned expressly by either of the 1863 Acts is that, for a rebellion to be established, the people involved must have an intention or purpose that is hostile to the Government. Exactly what intention or purpose must be present was a matter of dispute between the claimants and the Crown in their submissions. The claimants relied on Brookfield's opinion, from his study of the common-law rules of rebellion and the wording of the 1863 Acts, that the purpose of a rebellion must be to overthrow, by armed force or the threat of armed force, the authority of Her Majesty or Her Majesty's Government.[130] That conclusion takes particular account of the wording of the preamble to the Suppression of Rebellion Act 1863, which states that 'a combination for the *subversion* of the authority of Her Majesty and Her Majesty's Government has for some time existed amongst certain Aboriginal tribes of this Colony and has now manifested itself in acts of open Rebellion' (emphasis added). Consistent with that wording, Brookfield concluded that an intention to 'subvert' governmental authority may not be sufficient to establish that a state of rebellion exists, and may be more 'appropriate to a pre-rebellion stage'.[131]

When Crown counsel elaborated on the necessary 'mental element' for rebellion, she quoted from the works of William Hawkins and Sir William Blackstone. The first extract, from the 1795 edition of Hawkins' *A Treatise of the Pleas of the Crown*, begins with these words:

> it is to be observed, that not only those who directly rebel against the king, and take up arms in order to dethrone him, but also in many other cases, those who in a violent and forcible manner withstand his lawful authority, or endeavour to reform his government, are said to levy war against him.[132]

Counsel then quoted two examples of the 'many other cases', one being where the King's command not to withstand his forces was disobeyed and the other being where an insurrection was mounted in order to redress a real or pretended public grievance. While both examples require the use, or threatened use, of armed force by those who are 'levying war' against the King, neither requires that the conduct be engaged in for the specific purpose of dethroning the King. Rather, the examples indicate that 'levying war' against the King could be established where armed conduct, or the threat of it, was engaged in for a far more general anti-government purpose.[133]

129. Brookfield, para 4.3
130. Ibid; doc N11, p 99
131. Brookfield, para 4.3
132. Hawkins, *A Treatise of the Pleas of the Crown*, 1795 (doc 02, p 17)
133. Document 02, p 17

Another difference between the claimants' and the Crown's views of the more specific ingredients of rebellion concerns the relevance of the legal concept of self-defence. The claimants relied on Brookfield's opinion that, since it is a fundamental rule of law that the Crown cannot declare war on its own subjects, it would be lawful for Maori, faced by an unlawful attack by the Crown, 'to meet force with force, by applicable standards of reasonableness, (in self-defence) or necessity (in defence of their dwellings)'.[134] The Crown challenged both the breadth of that conclusion and its acceptance by the Ngati Awa and Taranaki Tribunals. Referring specifically to the view that there can be 'reasonable' armed resistance to an unlawful attack or to arrest, Crown counsel said:

> With respect, such definitions introduce an element of subtlety that is unsuited both to the circumstances of the 19th century British Empire or indeed to any circumstances in which some form of state 'emergency' exists.
>
> More particularly, the extent to which a legal distinction can be drawn between 'defensive' and 'offensive' action when considering the existence of rebellion is extremely doubtful. Any consideration of the righteousness of the underlying cause of the rebellion is equally novel. The fact that posterity might judge an insurrection to be somehow justified does not change its fundamentally rebellious nature.[135]

The claimants challenged the Crown's reliance on purely English legal sources, suggesting that the circumstances in New Zealand in the 1860s demanded some modification to the English law's concept of rebellion. The most notable of the unique local conditions was, of course, the existence of a Treaty between the Crown and Maori. Other modifying circumstances included the youth of the colony in the 1860s and, as a result, the relative unfamiliarity of Maori with English cultural and legal norms. As we discussed in chapter 3, this was especially true in Tauranga, where the Government had very little presence before 1863. In addition, there was an ambiguity in the status of Maori in relation to the colonial government, as was observed by the Secretary of State Lord Cardwell in April 1864. Cardwell cautioned Governor Grey about the confiscation of land under the New Zealand Settlements Act, stating that the property rights of 'Maori insurgents must be dealt with by methods not described in any law book'. The reason, he explained, was that English law did not deal with the 'exceptional circumstances' of the 'most anomalous case' that Maori occupied, having on the one hand acknowledged:

> the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand . . . having been allowed to retain their tribal organisations and native usages, and . . . thus occupying, in a great measure, the position of independent communities. Viewed in the former capacity, they have, by levying war against

134. Brookfield, para 4.4
135. Document 02, pp 16–17

> the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the criminal law. Viewed in the latter capacity, they would be at the mercy of their conquerors, to whom all public property would be at once transferred, private property remaining under the protection of international custom.[136]

A few months earlier, at the end of 1863, the former chief justice of New Zealand, Sir William Martin, had written to Native Minister Fox with his own observations on the (then) New Zealand Settlements Bill. He, too, identified the unique position of Maori as being relevant to their fair treatment:

> Leaving now on one side all questions of strict law, I proceed to other considerations, not to be disregarded by any reasonable man, as affecting the extent to which the rule of law, whatever it may be, should in practice be carried out; for every thoughtful man will see that the case of subjects over whom sovereignty has been acquired so recently and exercised so imperfectly, is practically very different from that of hereditary subjects of an ancient monarchy rising against a government which has been long recognised and established. . . .
>
> Whatever the relation between Sovereign and subject may be defined to be in this case of New Zealand, the relation must in this, as in all other cases, be a mutual one.
>
> If the Sovereign power has rights, it must also have duties; if the duties undertaken by the Sovereign have been fully performed, the Sovereign may claim a strict performance of the duties of the subject. If it has failed or been unable to perform them, it should deal less rigidly with its subjects.
>
> This is a principle of natural equity, which I suppose all will admit.[137]

Martin then set out at some length the reasons for his opinion that the Government had not taken 'its proper part in establishing institutions for the native race'.[138] Having paid particular attention to the situation in Taranaki and the Waikato, and noting 'the truth' that, 'in the greater part of this [North] island, the Queen's authority has never at any time been established in any real or practical sense', he continued:

> Let us honestly ask ourselves these questions:—How far is the loyalty of Englishmen to their Government connected with a sense of the benefits secured to them by that Government? How long does the loyalty of any European nation last towards its Government, however ancient and venerable, when that Government has ceased to secure those substantial benefits to its subjects?

136. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, app, p 21

137. Martin to Fox, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, p 8. The quotation given by Sir William Martin is from a memorandum of Governor Browne of 25 May 1861.

138. Martin to Fox, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, p 8

> At last we have made an attempt to retrieve our position by the 'Native Lands Act',[139] an Act which, if wisely worked, will necessarily and almost imperceptibly make us masters of the country, whilst it will benefit our subjects.
>
> But this measure had not come into operation when the present troubles began.
>
> I should not have spent many words on this point but for the language which is often heard, and which is used with evident honesty by many ill-informed people amongst us. Why should the Maoris distrust us? It is asked. In return it may be asked, 'Is not a distrust of the wielders of power one of the most habitual feelings amongst ourselves?' What is our whole system – House of Commons, trial by jury, municipalities, newspapers – but one elaborate manifestation of this feeling? How can we expect the New Zealanders to be free from it towards the strange race, whose power they see to be so vast, and of whose disposition towards themselves they feel so little assured?
>
> From acts and omissions of the Government, from translations of local papers, from the words and demeanour of private persons, they form the best estimate they can of our intentions. We may be sure the persuasion or misgiving is real and deep which leads men with few rifles, without bayonets, and without artillery, to stand up in opposition to our power.[140]

These contemporary opinions about the New Zealand situation provide a strong challenge to the Crown's submission that the appropriate definition of rebellion in 1860s New Zealand was that provided by the strictest of English legal rules. There is a strong case to be made that the particular circumstances of Maori needed to be taken into account when considering the question of rebellion. Chief among those particular circumstances was the existence of the Treaty of Waitangi, with its promise that the Crown would protect Maori tino rangatiratanga over land and other treasures. A related circumstance was the nature of Maori society: its strong tribal basis, the whanaungatanga links among tribal groups, and the dependence on the spiritual and physical connections of Maori to the natural world, particularly to their land. The 1860s New Zealand law of rebellion was not tested in court; had it been, and had it been found necessary to take account of such matters, one result might have been the acceptance of some kind of doctrine of justified self-defence. Accordingly, for one Maori group to help defend a related group from unlawful attack, for example, might have been found to be not rebellion but self-defence.

We have already noted that, in denying that Tauranga Maori were in rebellion by assisting in the Waikato, the claimants' submissions emphasised the connections between Tauranga and the Waikato, especially with Ngati Haua and the Kingitanga. Relying on the Crown's

139. The Native Lands Act 1862 brought the Native Land Court into being and gave it power to investigate customary title to Maori land and issue certificates of title to those found to be owners. It came into force throughout New Zealand by proclamation in December 1864: see David Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 64–69.

140. Martin, 'Observations on the Proposal to Take Native Lands under an Act of the Assembly', 16 November 1863, AJHR, 1864, E-2, app, pp 11, 12

acknowledgements and apologies in the Waikato Raupatu Claims Settlement Act 1995, the claimants maintained that Tauranga Maori should be treated no differently. Some claimants considered – at least before the Crown's closing submissions were made – that the Crown had acknowledged in the 1995 Act that Waikato Maori were not in rebellion.[141] That is not the case, however.

In its preamble, the Waikato Raupatu Claims Settlement Act 1995 made a number of acknowledgements that are relevant here. These were that:

- the chiefs who pledged their land to the Maori King 'bound their communities to the Kiingitanga, resisting further alienation of their land';
- the 'New Zealand Government at the time perceived the Kiingitanga as a challenge to the Queen's sovereignty and as a hindrance to Government land purchase policies, and did not agree to any role for, or formal relationship with, the Kiingitanga';
- in July 1863, 'military forces of the Crown unjustly invaded the Waikato south of the Mangatawhiri river, initiating hostilities against the Kiingitanga and the people'; and
- 'grave injustice was done to Waikato when the Crown, in breach of the Treaty of Waitangi, sent its forces into the Waikato, occupied and subsequently confiscated Waikato land, and unfairly labelled Waikato as rebels'.[142]

Further, section 6 of the Act recorded the Crown's apology in English in these terms:

> 1. The Crown acknowledges that its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangataawhiri in July 1863 and in unfairly labelling Waikato as rebels.

Bearing in mind the difference between legal rules and Treaty principles, the effect of those statutory acknowledgements by the Crown can be stated as follows:

- The Crown initiated hostilities by invading the Waikato and, in relation to the Kingitanga and Waikato Maori, this was unjust and in breach of the Treaty of Waitangi but it was not unlawful.
- Though it was unfair of the Crown to label Waikato as rebels, it was correct according to the law.

The Crown's position in the Tauranga inquiry was notable for its reliance on the broadest possible definition of rebellion. In further support of that position, the Crown cited a modern authority on international law to the effect that, according to its own perception of the threat to its national security, a state possesses broad powers to declare the existence of an emergency and to decide how to overcome it.[143] Clearly, the Crown's submission that Tauranga Maori were in rebellion by assisting in the Waikato was entirely consistent with the limited acknowledgements it made in the 1995 Act. Further, the Crown attempted to rebut

141. Document N11, pp 100–102
142. Preamble, B–E, R
143. Document O2, pp 18–19

the claimants' contention that Tauranga Maori were not in rebellion during the battles of Pukehinahina and Te Ranga but were acting in self defence.

As we indicated earlier, we consider the basis of the Crown's position to be an entirely Anglocentric view of the law of rebellion. Further, it is by no means clear to us that such a view would have been upheld in New Zealand in the 1860s had the matter been tested. However, even if the Crown's position were correct, and Tauranga Maori were legally in rebellion by rendering assistance in the Waikato, that conclusion would be no substitute for the Treaty-based analysis of the situation that we are charged with undertaking. We note that, where, as here, a question of law is relevant to a Treaty-based analysis of a situation but there is uncertainty about the law's answer to the question, the reasons for that uncertainty must also be relevant to the Treaty-based analysis.

4.9 Treaty Findings

Having concluded that it is unclear whether Tauranga Maori were legally in rebellion, we now proceed to determine whether the Crown's military undertakings at Tauranga in 1864 were in breach of Treaty principles. We do this by considering the Crown's actions in light of the overarching Treaty principle of reciprocity, discussed in chapter 1. This principle holds that the Crown's exercise of kawanatanga, conceded by Maori in article 1 of the Treaty, must be balanced by respect for the chiefs' tino rangatiratanga, which is guaranteed in article 2. Though the Crown clearly had a kawanatanga right and responsibility to maintain peace and good order, it could not itself create potential for civil unrest or war by invading the territory of Maori without just cause.

The Crown presented a considerable amount of valuable evidence to the Tribunal on the battles at Tauranga and their surrounding historical context. As discussed in section 4.7, much of this evidence points to the conclusion that, in the words of Crown counsel: 'Maori sought, and very deliberately provoked, an attack by Crown forces.'[144] The construction of a fighting pa at Pukehinahina was pointed to as the primary example of such provocation. We agree that Maori attempted to goad the Crown forces into attacking them and that this was a deliberate and sustained military strategy. However, the provocations were a reaction to the landing of British troops at Tauranga, and the troops had the military means to withstand them without attacking Maori. Judging from the actions of 'rebel' Tauranga Maori, it is safe to conclude that they believed, in light of what had transpired in the Waikato, that they would be attacked and that this was why British troops were deployed at Te Papa. Therefore, they sought to have the British attack take place in circumstances that would be to their advantage. The British attack on Pukehinahina was not an act of self-defence. The British were not

144. Document 02, p 30; doc M9, pp 82–92

trapped on Te Papa but came and went freely by sea. The troops left the mission station and attacked Maori on their own land. The provocations that the British suffered did not provide sufficient reason for the Crown to attack its own citizens, breaching its article 1 duty to provide good government by keeping the peace.

The Crown contended in this inquiry that Europeans in Tauranga received threats of physical harm from Wiremu Tamihana, and that this contributed to the situation that made it necessary for imperial troops to be stationed at Te Papa.[145] We consider this to be incorrect. The so-called threat was contained in a letter from Tamihana to Alfred Brown, but Tamihana explained that it was a 'warning' and concerned a planned attack on Auckland in response to British troops crossing into the Waikato.[146] Tamihana's explanation concurs with Brown's reported understanding of the letter.[147] Fox used Tamihana's alleged threat to kill unarmed civilians as part of the Government's justification for taking a hard line with 'rebel' Maori. Yet, parliamentarian George Graham wrote to the Secretary of State in 1865 to inform him that Fox had deliberately misrepresented Tamihana in an attempt to justify the war against the Kingitanga.[148] Tamihana's letter to Brown did not constitute a threat to kill the civilian population at Tauranga. We are unaware of any threats to kill civilians in Tauranga prior to the attack on Pukehinahina, and no civilians were killed before, during, or immediately after the two 1864 battles at Tauranga. The alleged threat of Kingitanga forces killing civilians has no bearing on the evaluation of whether the Crown acted within its kawanatanga rights in landing troops at Tauranga and attacking Pukehinahina.

In the period between the landing of troops at Te Papa and the battle at Pukehinahina, there was a considerable degree of interaction between Kingitanga Maori and the British forces. The commanders of the British troops received messages both directly and indirectly from the Kingitanga Maori at Tauranga. This correspondence varied in nature and included rumours of attack, inquiries as to why the troops were present at Tauranga, threats of attacks on the troops, attempts to set rules for fighting, and complaints about the conduct of the troops.[149] Several Tauranga Maori stated that they were perplexed by the presence of the soldiers; others complained that they had received no replies to their communications with British officers. Smith received a rebuke from Fox for revealing too much information about the Government's intentions at Tauranga and was ordered to stop communicating with Kingitanga Maori.[150] There is no clear evidence that the Government or the British troops made any significant attempt to dispel the Kingitanga perception that the imperial army was in Tauranga to fight with them. We disagree with Crown counsel's assertion that, after the troops landed at Tauranga, 'The fact that Carey was acting under defensive orders would

145. Document M9, pp 26–27
146. Evelyn Stokes, *Wiremu Tamihana, Rangatira* (Wellington: Huia Publishers, 2002), pp 348–349
147. Ibid, pp 346–347
148. Ibid, pp 347–348
149. Document O2, pp 29–31
150. Document A23, p 7

immediately have been apparent.'[151] Communicating with Kingitanga leaders was no doubt difficult for the British, but it was not impossible. Brown remained in contact with his convert, Tamihana, and with other Kingitanga leaders, and he was one obvious potential go-between. After the battle of Pukehinahina, the Crown was able to initiate negotiations through a group of neutral Maori. We consider that, for the Crown to have fulfilled its Treaty obligations to provide good governance, a more widespread and concerted effort to negotiate with the adherents of the King movement before attacking Pukehinahina would have been necessary.

In fact, although the Crown may have had the means to negotiate in good faith with Tauranga Kingitanga adherents, it lacked the will to do so until after its defeat at Pukehinahina. By April 1864, any chance of negotiations that did not involve the unconditional surrender of the Kingitanga forces was very slim because of the Government Ministers' intransigence. In the historical context of the times, a negotiated settlement of the Tauranga stand-off was impossible unless local Kingitanga Maori forfeited their tino rangatiratanga to the Crown. We consider that Tauranga Maori were acting consistently with the rights guaranteed to them by article 2 of the Treaty when they refused to do this.

Between January and April 1864, the situation in Tauranga was characterised by low-level skirmishing, rumours of Maori attack, and threats to Crown forces. We consider that the actions of the Crown, in landing a large and heavily armed expeditionary force at Te Papa and proceeding to conduct military operations on Maori land, were the most significant factor in creating the heightened tension at Tauranga. These Crown actions were no longer necessary to limit the scope of warfare in the Waikato, once fighting had finished there. They actually had the opposite effect of expanding the war into the Bay of Plenty. The few Pakeha civilians present at Tauranga were not in danger, and the Crown did not use all means available to peacefully defuse the situation in Tauranga Moana. We consider that there were opportunities, both before and during the war, for representatives of the Crown to consult with Maori and in that way to observe their partnership and Treaty responsibilities. Regrettably, the opportunities were not taken.

We accept that in normal times the conditions for partnership expressed by the president of the Court of Appeal in 1987, obliging both Maori and the Crown to act in the utmost good faith toward one another, would apply.[152] However, the conditions at Tauranga in the 1860s were not normal. Maori who were attacked by Crown forces obviously had difficulty in observing their duty of loyalty to the Queen. It was also difficult for Maori to accept the Queen's Government when there had been little evidence of the Government on the ground in Tauranga prior to the landing of troops, and when it was far from clear who held responsibility for various actions of the Crown. In light of these circumstances, it clearly was not

151. Document 02, p 28

152. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 207

Maori but the Crown who breached the reciprocal obligations the two Treaty partners had to each other.

There is one final conclusion to be drawn from our analysis of the Tauranga Moana conflict. It relates to a point that was not argued by the Crown but adverted to by some claimants, who relied on the *Taranaki Report* and its mention of extraordinary circumstances in which the Treaty of Waitangi could be suspended for a period.[153] It is our firm conclusion that the circumstances in Tauranga Moana were never so extraordinary as to warrant the suspension of the Treaty. To our mind, before the Crown could properly regard the Treaty protections and benefits guaranteed to Maori as having been suspended, Maori would need to have acted very clearly in contradiction of their Treaty promises to the Crown. Our analysis shows that the conduct of Tauranga Maori, both in the Waikato and in Tauranga before and during the battles there, was always open to an interpretation that was consistent with the Treaty, and particularly with Maori understandings of its meaning.

The result of our analysis to this point is that the Tribunal finds that the Crown acted inconsistently with the principles of the Treaty of Waitangi, especially the principles of reciprocity, partnership, and active protection by:

- failing to protect the rangatiratanga of Tauranga Maori by attacking them at Pukehinahina and Te Ranga without just cause; and
- failing to provide good governance by attacking Tauranga Maori and thereby creating a state of war in the district.

4.10 Chapter Summary

The main points in this chapter are as follows:

- The British military's 1864 campaign in Tauranga was undertaken with conflicting agendas in mind. Premier Whitaker hoped to use the campaign to advance his confiscation designs, while General Cameron and Governor Grey originally envisaged a defensive and temporary occupation. However, when Cameron saw an opportunity, he sought to end the Waikato war decisively at Tauranga.
- Tauranga Maori viewed the landing of troops in the region with deep anxiety. They soon came to believe that conflict with the British force was inevitable and set about trying to provoke the soldiers into attacking them in circumstances that were to their advantage.
- The British troops attacked Tauranga Maori and suffered a defeat in the battle of Pukehinahina of 29 April 1864. However, this was more than avenged on 21 June 1864 at the battle of Te Ranga.

153. Document N11, pp 98–99

- The contention that Tauranga and other Maori were in rebellion in the 1860s was not tested in a court of law at the time. Had it been, the court could have upheld it only by relying on the strictest English definitions of the concept. It is entirely possible that a court could have taken into account the local circumstances of the time and found that Taranaki, Waikato, and Tauranga Maori were not in rebellion. It is therefore a moot point whether the actions of Tauranga Maori constituted rebellion in the legal sense of the word.
- Whether or not Maori were in rebellion, the Crown clearly acted in breach of the Treaty principles of reciprocity, partnership, and active protection by attacking Maori at Pukehinahina and Te Ranga.

CHAPTER 5

PEACE NEGOTIATIONS

5.1 Introduction

In this chapter, we consider the aftermath of the battles at Pukehinahina and Te Ranga. The months immediately after the engagements were a time of intense negotiation between Crown officials and Tauranga Maori as they tried to agree on what land would be taken as punishment for the Tauranga 'rebellion'. We do not make findings concerning these negotiations in this chapter. Instead, we come to conclusions on the issue of what Maori and the Crown agreed to in the second half of 1864. This provides part of the necessary context for evaluating the claimants' allegations of Treaty breach arising from the confiscation, which we do in the next chapter. As we have already pointed out, it is necessary to keep in mind that the situation at Tauranga did not take place in a vacuum but was a part of wider developments in the political and military landscape. As far as the peace negotiations are concerned, those wider developments include the Government's confiscation policy, as well as the continuing disagreement between the Governor and his Ministers over who was responsible for native affairs. Before we discuss the peace negotiations themselves, we will briefly outline these contextual issues.

5.1.1 The historical context of confiscation policy

The confiscation policy was given effect to by the New Zealand Settlements Act 1863 and the accompanying Suppression of Rebellion Act 1863. These Acts, drafted by Premier Frederick Whitaker, were modelled on Irish statutes, and Irish precedents were much in the minds of those members who debated the legislation in Parliament. When the Acts were passed in December 1863, war had already resumed in Taranaki and the Waikato campaign was under way. The New Zealand Settlements Act provided retrospectively for confiscation for any acts of rebellion since 1 January 1863, as well as prospectively for any rebellion that might yet occur. Grey approved the legislation and, although the Queen could still have disallowed it (within a year of its receipt), she did not do so. The Secretary of State for the Colonies, the Duke of Newcastle, reluctantly approved the Act and expressed his hope that the confiscations would not be carried too far.[1] As we noted in chapter 4, the British Government

1. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 115

wanted New Zealand to shoulder the cost of the imperial troops, which the Whitaker Ministry expected to do by the sale of confiscated land not required for military settlements. We also noted the Ministers' plan to include Tauranga in the confiscation of Waikato land, placing it within a 'frontier line' running from Raglan in the west to Tauranga in the east. This was confirmed by the Executive Council on 14 December 1863 and reaffirmed by Whitaker on 25 June 1864.

We do not need to recapitulate the wrangle that followed between Grey and his Ministers. But we do note that the confiscation plan was in existence before Tauranga was occupied by imperial troops and that it was vigorously pursued by the Whitaker Ministry thereafter, until the Ministry resigned en masse in frustration at the end of September 1864 (though Grey did not accept that resignation and form a new Ministry until November). Once a new Ministry was installed, Grey signed Orders in Council providing for the confiscation of large areas of land in the Waikato in December 1864 and Taranaki in January 1865. But he delayed signing the order for the confiscation in Tauranga until 18 May 1865, as we explain in our next chapter.

As we describe in detail below, there were considerable differences between Grey and his Ministers about how the peace negotiations at Tauranga, and indeed the confiscation policy in general, should be conducted. A further complication was that two alternative modes of colonisation were being proposed for the country: military settlement on land confiscated under the New Zealand Settlements Act and private settlement on land purchased by the Crown (such as Te Puna–Katikati) or purchased by settlers under the Native Lands Acts of 1862 and 1865. Once again, there was an untidy compromise. When the first party of 300 military settlers arrived from the Waikato on 24 May 1864 (to be followed by a further 280 men in June),[2] the balance appeared to be tipped in favour of military settlement. The men had been promised land, and since they were entitled to receive pay and rations until settled on their land, the Government was under pressure to effect a cession or confiscation. But the longer this was delayed, the more likely it became that private speculators or settlers would get hold of the best land, ahead of the military. We discuss this further in our next chapter.

5.1.2 Confiscation and cession terminology

After the battles of Pukehinahina and Te Ranga, it was not inevitable that Tauranga would be subject to the confiscation provisions of the New Zealand Settlements Act. The Crown submitted to the Tribunal that, for most of the year following the end of fighting at Tauranga, Grey, at least, was trying to effect a cession rather than a confiscation. Crown counsel defined cession as involving the 'transfer of sovereignty over the territory of one sovereign state to another, often . . . after a war as part of a peace settlement'.[3] The key differences between

2. Document A2, p 45
3. Document O2, p 36

cession and confiscation, we were advised, are that in a confiscation a state takes land from its own citizens, while in a cession, land is taken from another state, and only following negotiations. This definition, taken from the context of international law, is not wholly apposite to the circumstances at Tauranga. As the new Secretary of State Lord Cardwell pointed out in his famous dispatch of 26 April 1864 on the subject of the New Zealand Settlements Act, although Maori occupied, 'in a great measure, the position of independent communities' in New Zealand, nevertheless they were subjects of the state that was authorised by the Act to take their land.[4] When Cardwell encouraged Grey to achieve the 'cession' of Maori land in preference to its confiscation, he was referring to a cession in the context of domestic law, not international law. Therefore, it seems that the 'cession' he envisaged involved the taking of Maori land in circumstances where there was, at the least, an element of negotiation over the extent and location of the land to be 'ceded'.

The Crown argued that, even though the New Zealand Settlements Act was eventually relied on in Tauranga, and a block of 50,000 acres of land was taken, the practical effect was still that of a cession rather than a confiscation. This was, Crown counsel submitted, because the taking and retaining of the confiscated block was in line with what Tauranga Maori and Grey had negotiated after the Tauranga fighting.[5]

We agree with the Crown that, between the fighting's end and the May 1865 Order in Council proclaiming Tauranga to be a district under the New Zealand Settlements Act, Grey did negotiate with Tauranga Maori as if he were trying to obtain a cession. Simultaneously, however, his Ministers were hoping to obtain a confiscation. While Cardwell's advice gave Grey added grounds for resisting the Ministers' grand confiscation plans, in the end, Grey was not successful. In our opinion, the application of the New Zealand Settlements Act to Tauranga and the retention of the confiscated block by the Crown are best described as effecting a confiscation. Clearly, the situation requires some care with terminology, and accordingly we are cautious in our use of the term 'confiscation' in this chapter.

5.2 Negotiating a Peace

Attempts to find a peaceful resolution to the situation in Tauranga began in the uneasy aftermath of the battle of Pukehinahina, several weeks before the battle of Te Ranga weakened the resistance of Tauranga Maori. But the conduct of the peace negotiations, as with the conduct of the war, was disrupted by the ongoing dispute between Grey and his Ministers over the extent of the proposed confiscation. While Grey was prepared to allow Maori to retain most of their land, the Ministers wanted the majority of it included within their confiscation line.

4. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, app, p 21
5. Document 02, pp 40–41, 54

Grey took the initiative soon after the battle of Pukehinahina. After a meeting with Cameron at Te Papa on 12 May, he accepted Cameron's advice that, if the Ministers decided to go ahead with a military settlement, 'about one thousand' settlers could hold the country on which they might be located.[6] Whitaker immediately gave instructions for the dispatch of the 300 military settlers from the Waikato.[7] As Whitaker saw it, they would be placed 'in such numbers and positions as will form part of the general line of defence of the country'.[8] As we mentioned above, more military settlers followed in June.

5.2.1 Grey's hui with 'friendly' Maori, 14 May 1864

Grey followed his discussions with Cameron with a hui, which he held at Te Papa on 14 May. We have not located any report by Grey on this hui, and he does not appear to have informed his Ministers of it.[9] However, it was reported in three Auckland newspapers, the *Daily Southern Cross*, the *New Zealander*, and the *New Zealand Herald*. The *Daily Southern Cross* said that the meeting was with 'a few' Ngai Te Rangi who 'designate themselves friendly'. Among those few were Tomika Te Mutu and Te Kuka from Otumoetai; Maihi Pohepohe and Rawiri Taipari from Maungatapu; and Tamati Manao, Wi Patene, Hohepa, and Parera from Matapihi.[10] Meanwhile, the *New Zealander* reported that a 'large number' were present at the hui and that Grey used the occasion to voice:

> his desire to see the two races at peace, and promised generous treatment in case of surrender. The friendlies who wished to see their erring brethren return to their former peaceful pursuits were informed that they would do good service by using their persuasive powers, and received the Governor's assurance . . . that if the rebels returned and gave up their arms, he would answer for their kind treatment.[11]

The *New Zealand Herald* reported that:

> a number of the most respectable of the friendly natives paid their respects to his Excellency, in order to ascertain his views with regard to the rebels in the district. The interview was not a protracted one . . . But whatever the result might have been the natives appeared to be overjoyed.[12]

Grey returned to Auckland immediately after the hui.

---

6. Grey, memorandum, 13 May 1864, AJHR, 1864, E-2, p 67
7. Whitaker, 'Memorandum by Ministers', 14 May 1864, AJHR, 1864, E-2, p 68
8. Whitaker, 'Memorandum by Ministers', 19 May 1864, AJHR, 1864, E-2, p 69
9. Document A23, p 10
10. Daily Southern Cross, 17 May 1864, p 3 (doc A23, pp 1–11)
11. *New Zealander*, 31 May 1864, p 5 (doc A23, p 10)
12. *New Zealand Herald*, 20 May 1864

In this first peace hui, Grey initiated a strategy that he and his Ministers would follow in the negotiations that lay ahead: namely, working with loyal Ngai Te Rangi chiefs, who were assured that they would be amply rewarded for their loyalty. Initially, these chiefs were used as mediators to obtain the surrender of other Tauranga Maori deemed to be in rebellion.[13] The precise terms that Grey offered through these mediators are not known, but the *New Zealander* reported that Maori still in arms would 'cease fighting and surrender their arms if they could have a full claim over [their] lands' and and that the Governor had assured them that 'no evil should befall them'. They would await the Governor's word before they made their next decisive move.[14] One of them did surrender to Greer, however.[15]

Following Grey's hui, Cameron withdrew many of his troops to Auckland. It is unlikely that he would have done so if he had believed that there was any risk of Maori following up their success at Pukehinahina. With a smaller force now stationed at Tauranga, Cameron elected to consolidate the British position at Te Papa, constructing redoubts and patrolling the area with well-armed columns of troops. As we noted in our previous chapter, the British success at Te Ranga in June was a fortuitous consequence of that strategy.[16] The defeat suffered there by Ngai Te Rangi and their allies improved the chances for peace, although there was no immediate surrender by those who had survived. As the Alfred Brown warned Grey, some prominent 'rebel' Maori remained at large, among them Kiharoa, Enoka, Hakaraia, Kaingarara, and the 'Judea Natives, most of Te Wairoa & Hori Kingi Tupaia with his small Tribe'.[17]

The imperial troops, having avenged Pukehinahina, also welcomed the possibility of peace. As Resident Magistrate William Baker observed:

> The military are tired of foreign service, and having no stake or interest in the country, care not for the future troubles and perplexities that may arise out of any error in the system by which terms of peace are negotiated. The war is unpopular with them, and their chief care is how quickest to get out of it.[18]

One officer 'emphatically declared [to Baker] that he did not care on what terms peace was made, so long as it resulted in their removal from the country'.[19]

After Te Ranga, Grey continued his efforts for peace. But his Ministers remained belligerent, and pressed for a further campaign against Wiremu Tamihana's people at Matamata and Peria. Whitaker thought that such an operation would have 'a most beneficial effect on

13. Document A23, p 11
14. *New Zealander*, 25 May 1864, p 5; 31 May 1864, p 6 (doc A23, p 11)
15. Deputy quarter-master general journals, G16/3, no 65, ArchNZ, p 120, War Office, Great Britain (James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), p 189); Cameron to Grey, 2 July 1864, MS papers 0035–04, ATL, p 19 (doc K25, p 45)
16. Belich, pp 188–192
17. Brown to Governor Grey, 27 June 1864 (doc K25, p 44)
18. William Baker, AJHR, 1869, A-18 (Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), p 80)
19. Stokes, p 80

the rebels and the disaffected Natives in the Thames and Tauranga districts, and render them more ready to accept terms of submission'.[20] However, the Ministers did not get their way. Unable to dictate the terms of war, they tried instead to control the peacemaking, and to pressure Grey into authorising the confiscation.

At a meeting of the Executive Council on 28 May 1864 attended by Whitaker and Russell, Grey signed three Orders in Council proclaiming districts under the New Zealand Settlements Act. At least one of these districts was in Tauranga.[21] But Grey refused to sign accompanying regulations to provide for the return of land to surrendered Maori, and so the orders were not issued.[22] Through June and July, Grey continued to press his Ministers to define the areas that they intended to confiscate and use for military settlements. For their part, the Ministers continued to reiterate their aim to confiscate all the land from Raglan to Tauranga and to locate military settlers along that frontier.[23]

5.2.2 The surrender negotiations, June–July 1864

Through June and July, Grey and his Ministers competed for control of the peace negotiations, largely through different officials working on the ground in Tauranga. The Governor negotiated with 'Ngaiterangi' through Henry Rice and Greer.[24] The latter was now the senior military officer in Tauranga, the former a junior officer in the Native Department who acted as an interpreter for the military. Rice appears to have acted on Grey's direct authority and had the confidence of Greer, though his critics accused him of having little knowledge of Maori.[25] On the other hand, the Ministers worked through two more senior Native Department officials, James Mackay junior, the civil commissioner at Thames (whose district extended to the Wairoa River in Tauranga), and Resident Magistrate William Baker. This resulted, as Riseborough put it, in 'two conflicting versions of the peacemaking process, one written by Rice, the other by Mackay and Baker'.[26] The antics of the two sides would soon enter the realm of burlesque.

Grey's hand was strengthened when he received Cardwell's aforementioned dispatch of 26 April 1864, which constituted the British Government's considered response to the New

20. Whitaker, 'Memorandum for the Governor', no 9, 27 June 1864, AJHR, 1864, E-2, p 69
21. The Executive Council minutes, recorded by a clerk, state that two of the districts were in Tauranga. Grey's account states that only one was: see Whitaker, memorandum 11, 24 June 1864, encls 1, 2, AJHR, 1864, E-2, p 57
22. Whitaker, 'Memorandum by Ministers', no 10, 24 June 1864, AJHR, 1864, E-2, p 56
23. For example, Whitaker, 'Memorandum by Ministers', 24 June 1864, AJHR, 1864, E-2, p 56; 'Memorandum by Ministers', no 11, 25 June 1864, AJHR, 1864, E-2, pp 58–59; 'Memorandum by Ministers', no 16, 25 June 1864, AJHR, 1864, E-2, pp 59–60; 'Memorandum by Ministers', no 18, 1 July 1864, AJHR, 1864, E-2, pp 61–62; 'Memorandum by Ministers', 6 June 1864, AJHR, 1864, E-2, pp 63–64
24. Document A23, p 15
25. Mackay to Fox, 27 July 1864, AJHR, 1869, A-18, pp 5–7
26. Document A23, p 14

Zealand Settlements Act and associated legislation.[27] The dispatch was published in the *New Zealand Gazette* on 30 June, and in Auckland newspapers the following day. Cardwell observed that the four-fold increase in confiscation planned by the Whitaker Ministry under the Act 'exhibits a rapid expansion of the principles in which the Duke of Newcastle acquiesced with so much reserve'. Although Cardwell decided that the Act was to remain in operation 'for the present', he added that no confiscation was to take place without Grey's personal concurrence. Moreover, Cardwell advised that 'the proposed appropriation of land should take the form of a cession imposed by yourself and General Cameron upon the conquered tribes'. Only if this was found to be impossible was Grey to bring the New Zealand Settlements Act into operation, 'subject to certain reservations'. These conditions included: the passing of legislation to limit the duration of the Act to two years from its original enactment; the establishment of a commission to inquire into what lands might properly be forfeited, with members not removable by the Ministry; and finally, as noted, that Grey's concurrence in any confiscation not be given unless he were satisfied that it was 'just and moderate'. We note in passing that, except possibly for the last one, these conditions were not observed. Although Cardwell acknowledged elsewhere in his dispatch that the settler Ministry was now responsible for native affairs, his instruction that Grey was to exercise substantial control over any confiscations considerably compromised that ministerial responsibility. Cardwell's dispatch thus justified Grey's personal involvement in the Tauranga confiscation while at the same time exacerbating the row between Grey and his Ministers over its extent.

It is likely that aspects of Cardwell's dispatch were communicated by Rice to unsurrendered Tauranga Maori still in arms on 5 July and that this was a factor in their offer to surrender.[28] It is also likely that Rice made use of a proclamation laying down conditions for surrender that Fox had drafted in February but that had not been issued until after the battle at Te Ranga.[29] The conditions included the surrender of arms, the signing of a declaration of allegiance to the Queen, and the making of a statement that 'the disposal of their lands rests with the Governor'. This statement, which did not specifically mention confiscation, may well have been the origin of the idea, later expressed by surrendering chiefs at various hui, that they would entrust the mana of their lands to Grey.

Over the next fortnight, Rice travelled extensively trying to bring about a surrender. While the precise terms he offered Maori are unknown, it seems that Grey did not expect Rice to procure an unqualified surrender. In any case, his activity began to yield results. On 13 July, a small party of 'Ngaiterangi' surrendered, and they were joined by a further 20 on 16 July.[30] The *New Zealand Herald* reported on 16 July that there were '300 on the road to the camp to

27. Cardwell to Grey, 'Papers Relative to Despatch from the Secretary of State', 26 April 1864, AJHR, 1864, E-2, app, pp 20–23

28. Document A23, p 22

29. The proclamation is quoted in doc N11, pp 81–82.

30. Document A23, p 12

deliver up arms and swear allegiance',[31] though this proved to be a little premature, since Rice subsequently had to return to the 'rebels' located near the Wairoa River to conduct further negotiations. By 21 July, Rice was claiming 'success in having received an assent of the all principal chiefs to surrender themselves and their *all* unconditionally, to the mercy of the Crown' (emphasis in original).[32]

It was at this stage that the Ministers intervened, belatedly attempting to influence the terms of peace. On 18 July, Rice was told by Fox, the Native Minister, that the Government was considering 'general terms of peace', and he was directed to return to Auckland immediately where he would be given further instructions when the matter was decided. But Rice did not return to Auckland, and at this point Fox sent Mackay and Baker to Tauranga, where they shadowed Rice and tried to influence the peace process.[33]

According to Mackay, he and Baker were simply trying to ensure that 'the Government were not in any way compromised, or the Natives deceived into a peace' and that Maori 'distinctly understood the terms on which they surrendered'.[34] As Baker recorded in his diary, the pair accepted that it was proper for the 'rebels' to surrender their arms to Greer, as the military officer in command. But declarations of allegiance to the Crown needed to be signed before the civil authorities – in other words, themselves.[35] Such protocols apart, it is evident from some of their remarks that Mackay and Baker were also in Tauranga to try to stop Grey and Greer from making a generous peace that would frustrate their Ministers' intentions. Mackay reported to Fox on speeches by Hori Ngatai and Pene Taka, two of the leading 'rebel' chiefs who were being induced to surrender, saying that they were:

> a strong proof that pressures of various kinds has been brought to bear upon the Natives to bring about a peace. Much as a speedy termination of the war is to be wished for, and as much as I would personally rejoice in a lasting peace, I cannot view the whole proceedings of Colonel Greer and Mr Rice at Tauranga as being otherwise than premature, and to say the least indiscreet, if not discreditable to the Colony at large.[36]

Mackay also said that it would be 'highly injudicious' for Grey himself to go to Tauranga to make peace in person. To do so would strengthen the idea then gaining ground that the Government required peace because of the expected withdrawal of most of the imperial troops from the colony.[37] Baker also stressed this point, saying that on the pair's arrival in Tauranga on 20 July they:

31. *New Zealand Herald*, 16 July 1864 (doc A23, p 15)
32. *New Zealander*, 30 July 1864, p 6 (doc A23, p 15)
33. Shortland to Rice, 18 July 1864; Fox to Rice, 19 July 1864 (doc A22, p 15)
34. 'Reports Relative to Negotiations for Peace with the Ngaiterangi Tribe', 27 July 1864, AJHR, 1869, A-18, p 4
35. 'Reports Relative to Negotiations for Peace with the Ngaiterangi Tribe', 19–26 July 1864, AJHR, 1869, A-18, p 11
36. 'Reports Relative to Negotiations for Peace with the Ngaiterangi Tribe', 27 July 1864, AJHR, 1869, A-18, pp 6–7
37. Ibid, p 7

found every one in a great state of anxiety and excitement regarding the peace movement, which the military seem to look upon as the first step towards their return home. From what I can learn, there appears to have been some degree of pressure brought to bear upon the question, and there seems no doubt about the fact that the overtures were made from the Government side . . . Mr Mackay and myself engaged till a late hour conversing with the Natives, sifting the question and explaining to them (the friendly Natives) the nature of the terms of peace. I do not think, from all I can gather, that the rebel Ngaiterangi understand them.

Baker added that one chief, Te Kiepa Amohau, had:

told us plainly that the overtures for peace were made by friendly chiefs in the pay of the Government; that it was a case of 'tiki' (fetch), not 'kuhu noa mai' (creeping in of their own accord), thus confirming our fears that the matter did not originate with the rebels . . . In fact his whole manner was such that I inferred he was ignorant of or misunderstood the great question of confiscation, and the disposal of their lands . . . When Mr Mackay came to bed he informed me that my surmises were correct; that Te Amohau had informed him that he knew nothing about the *whenua* part of the question, and did not know that he was to lose his land.

Four days later, on the eve of the surrender hui, McKay and Baker visited Maori at Matapihi. Baker recorded that:

Upon our arrival a paper was being read purporting to be a declaration of the surrender of their arms to Colonel Greer, leaving their lands to the disposal of the Governor. Even on this head there was an evident misunderstanding. The *mana* of the land was spoken of. On this being set right, it leaked out that they fancied the Governor would be satisfied with what may be call[ed] a nominal or temporary surrender; that he would retain a portion, but give them back the greater quantity.[38]

Here, Mackay and Baker gained an inkling of the terms by which Grey was attempting to receive a cession – terms that were deeply disturbing to them and their political bosses. Grey, through Greer and Rice, was promising to hand back most of the land his Ministers hoped to confiscate and either use for military settlement or sell. Even more disturbing, Baker admitted, was Greer's plan to settle Ngai Te Rangi (presumably 'loyals' as well as surrendered 'rebels') at Otumoetai. As Baker recorded:

I objected, on the ground that in all probability the Government would require that land for the Waikato Militia. The Colonel however seems bent on carrying out his own plans, and

38. 'Reports Relative to Negotiations for Peace with the Ngaiterangi Tribe', 22 July 1864, AJHR, 1869, A-18, pp 9–10

> will have his own way. Thinks it would be an advantage to have the Maoris along the coast line, and proposes that the settlers should take the land behind them.

Baker added that it was far better that Tauranga Maori should 'suffer temporary inconvenience in the wooded retreats to which their follies have driven them' than that 'the Government should be hampered by them in fulfilment of the pledges given to the Waikato Militia'. Those pledges, he noted, would require 60,000 acres.[39]

In contrast to Grey's peace plan, Mackay was apparently telling Tauranga Maori that, even if they chose the path of peace, they must give up their land to the Governor, who would give them back 'a small portion of it . . . The greater portion of the land is for the Governor alone.'[40] It is also evident that Baker and his Ministers were determined to confiscate the fertile estuarine margin of the western Tauranga district for military settlement, and to confine the 'rebel' Maori to the bushclad hill country.

5.2.3 The surrender hui, 25 July 1864

On 25 July 1864, a large hui was held at Te Papa at which most of the Tauranga Maori still in arms surrendered to Greer and signed a certificate of loyalty. Rice was meant to be there, but he was indisposed and was replaced by an interpreter from Taupo named Shepherd. Baker recorded the event in his diary as follows:

> A fine morning, and the Natives flocking into camp . . . The Natives were arranged on the grass lawn in front of the Colonel's quarters, a table with writing materials being placed on the verandah.
>
> Mr Shepherd having read a declaration which he asked if they understood, was desired to read it again. They then replied that they did. Colonel Greer remarked that some of the Ngatihoko had not signed, and desired them to come forward and do so. The signatures having been obtained the Natives proceeded to surrender their arms, as (per list enclosed) follows:—Flint muskets, 39; fowling pieces, smooth bore percussion, 6; fowling pieces, flint, 3; cartouch boxes, 69; boxes caps, 4; papers caps, 1; double-barrel guns, percussion, 2; spears, 4; hatchets, 3; taiaha, 1; pistol, 1; rifles, 5; tewhatewha, 1; whalebone patu, 1.
>
> Colonel Greer, through Mr Rice, assured them that he had perfect confidence in their professions; they were brave men, and, believing them to be honest, he put faith in what they said now they had laid down their arms. The Governor should be informed of all that had taken place, and would not let any person interfere with them; would wait instructions from the Governor . . .
>
> It was then proposed by Colonel Greer that the meeting should adjourn to enable them to partake of refreshment, but Enoka said,

39. 'Reports Relative to Negotiations for Peace with the Ngaiterangi Tribe', 22 July 1864, AJHR, 1869, A-18, p 9
40. Takerei, enclosed in Greer to deputy quarter-master general, G16/3, 26 July 1864 (doc A23, p 16)

> Let the Governor come in person . . . let him come in person that we may see him face to face . . . in order that we may hear words from his own mouth. As for what the Colonel says about fighting, we reply that we will not fight again . . . The war is finished. If any one takes up arms in the future, let the law judge him. (Then turning to Ngaiterangi.) Now faithfully keep your promise, as I intend to do.[41]

The hui adjourned for half an hour. When it resumed, two of the surrendering chiefs addressed the crowd. According to Baker, Ngatai spoke first:

> We will not go back to what we have given up. If we knew how to repair our arms, it might be otherwise. We now have nothing but our hands, and this peace must be lasting; we are in earnest. All the men who took part in the fighting are here, or else they are dead. I have done fighting, let there be an end on your part . . . Let it be peace to the land, peace to mankind. Mr Rice fetched me, so I came, and peace has been made . . . If Mr Rice had not come, there would have been no peace . . .

Then Taka spoke, saying, among other things:

> Welcome to your tikanga . . . In the days of evil I was punished, now I am snatched from death. I have led the Tauranga chiefs to death . . . The chiefs are dead, and I, the slave, remain . . . If we offend once more, we shall perhaps be all swept away . . . Let the flag now wave over me . . . Now befriend us; we will not listen to false reports . . . It is well, I agree to the proposal about Mr Rice. 'Nana tenei kumenga mai' (this drawing together has been his).

Greer promised to send the chiefs' words to the Governor and warned them not to believe 'any stories you may hear, nor what anyone else may say to you. If there is any interference, or you suffer any annoyance, come and inform me; I will be the medium of your communication with the Governor.' The hui then concluded.

Greer's references to interference clearly related to the activities of Mackay and Baker. He elaborated on this in a letter to the deputy quartermaster general that was enclosed in Grey's report of the proceedings to Cardwell. Greer praised the 'tact and ability' of Rice, 'notwithstanding the opposition and obstruction of Mr Mackay, Commissioner of the Thames district (whom I have been obliged to confine to the neighbourhood of his tent) and Mr Baker, interpreter'.[42] Mackay was initially excluded from the hui and was allowed in only when he promised not to interfere with the proceedings. But he reneged on his word and tried to take control of the declarations of allegiance and the signing of loyalty certificates, whereupon he was placed under arrest.[43] Meanwhile, Baker was instructed not to leave the district without Greer's consent.[44]

41. Baker's diary, 25 July 1864, AJHR, 1869, A-18, pp 11–12
42. Greer to deputy quarter-master general, 25 July 1864, 29 July 1864, BPP, vol 14, p 83
43. Mackay to Fox, 27 July 1864, AJHR, 1869, A-18, pp 5–6
44. Baker's diary, 25 July 1864, AJHR, 1869, A-18, p 12

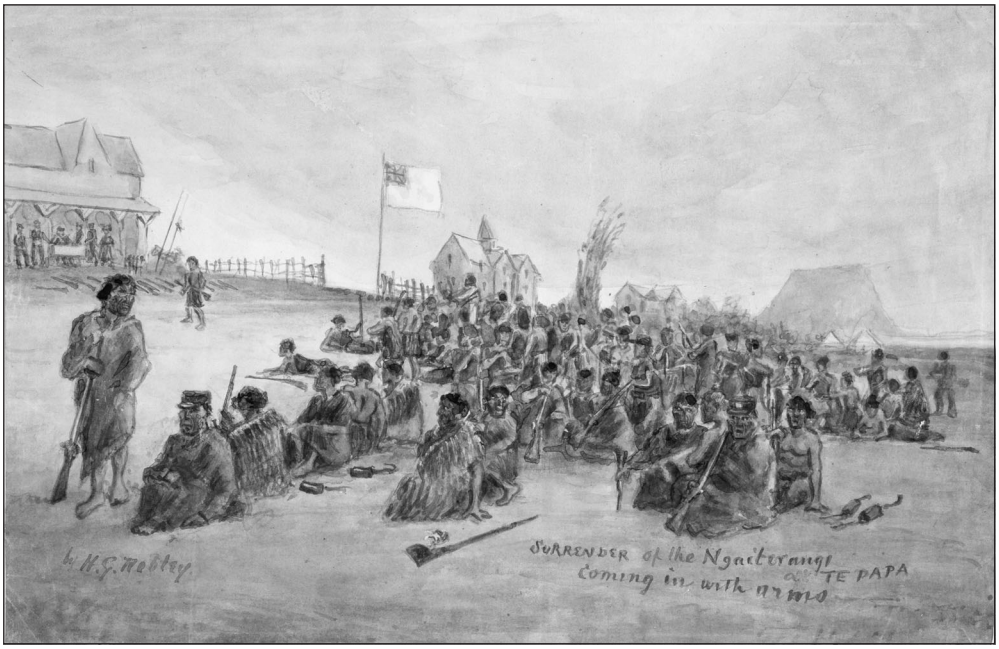


Fig 8: *Surrender of the Ngaiterangi at Te Papa – Coming in with Arms, 25th July 1864*. Watercolour by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (A-033-010).

In his report on the hui, Greer claimed that Baker's interpretation of the chiefs' speeches (which we have quoted from above) gave 'a very different meaning in some instances' from that conveyed to him by Shepherd.[45] For this reason, Greer asked Bishop William Williams of Waiapu, who was also present, to provide another interpretation, which he then included in his report. Williams's interpretations of the speeches by Enoka, Ngatai, and Taka did not differ substantially from Baker's except in one respect. Williams recorded more profuse praise for Rice, including the statement from Ngatai that Rice was the 'person to lay down regulations for me'. According to Williams, Ngatai then asked the people: 'Do you wish for Rice?' To this, they answered: 'Yes'. Williams also recorded that Taka said, 'Let Rice be my magistrate; the fixed Resident at Tauranga. It was he who dragged us here to a state of safety.' According to the report Taka 'again asked his countrymen whether they wished to have Rice, to which they exclaimed, "Yes."'[46]

The squabble between Grey and his Ministers continued when Grey, having got hold of Baker's journal, asked that Baker be withdrawn from any further engagement with Greer in Tauranga. Colonial Secretary Fox complied, though, as he put it, not 'on the ground suggested by his Excellency' but because he was 'very unwilling to subject officers of the Colonial Government to such discourteous and even illegal treatment as Colonel Greer appears to have resorted to in the case of Mr Mackay'.[47]

45. *New Zealander*, 28 July 1864
46. Copy of bishop of Waiapu's notes, undated, BPP, vol 14, p 85
47. Grey, memorandum 1, 29 July 1864; Fox, 'Memo on the Subject of Mr Baker's Employment as Interpreter to the Troops', no 2, 30 July 1864, AJHR, 1864, E–2, p 80

The accounts of the surrender hui by Mackay, Baker, and Williams give the impression that it was confined to the meeting at Te Papa camp on 25 July, at which 'Ngaiterangi' surrendered. In fact, Rice's lists of those who surrendered and their hapu indicate that the surrenders took place at Hairini, Otumoetai, and Te Papa over two days – 24 and 25 July – and that those who surrendered included men of various Ngati Ranginui as well as Ngai Te Rangi hapu.[48] Rice had done his job more thoroughly than he was given credit for, at least by Mackay and Baker. Altogether, his lists contain 157 names, along with the weapons each laid before Greer. We reproduce them in appendix II.

In his covering letter with the lists, Rice stressed that the decisions to lay down arms were spontaneous: 'I did not under any circumstances request the Natives to surrender. All that have done so will tell you that it was their own wish and will. I stated the words used in the Proclamation . . . The statement that I fetched them is untrue.' Rice also gave his view of the row with Mackay and Baker:

> It is to be deeply regretted that out of this matter a most disagreeable difference has arisen between the officer commanding here and Mr Commissioner Mackay.
>
> It is certainly beyond contradiction that Messrs Mackay and Baker have appeared to have been doing their utmost to disturb arrangements already advancing so pleasantly. I have carefully avoided being drawn into this difficulty, but feel that there must be some cause for their determined and continued annoyances.[49]

As we have noted, one issue between the two parties was who would take the oaths of allegiance that accompanied the surrender: the military (represented by Greer and Rice) or the civil authorities (represented by Mackay and Baker). The translation of the oath said: 'We, the undersigned, being desirous to make peace, give up our arms to Colonel Greer, and make the following declaration [of loyalty], clearly understanding that the disposal of our land is to be left to the Governor and the General.'[50] A declaration of loyalty followed, together with the signatures of those who surrendered. This text appears not dissimilar to the proclamation that Fox issued after Te Ranga, noted above (see sec 5.2.2), which spoke of signing a declaration of allegiance and agreeing to leave the disposal of lands to the Governor.[51] But, since we do not have the Maori text of the document, we cannot be sure how the agreement to leave the disposal of the land to the Governor (and the general) was expressed, and whether, in particular, it included the notion of giving the chiefs' mana over the land to Grey. In any case, a wide gulf remained between Grey and his Ministers over the extent of the proposed cession or confiscation. On 29 July, Grey sent a second dispatch to Cardwell outlining his (and Cameron's) opposition to his Ministers' proposal to continue the war in Tauranga,

48. H E Rice, BPP, 1865, vol 14, pp 104–106 (doc A2, app 3, pp 238–241)
49. Rice to Colonial Secretary at Native Department, 26 July 1864, BPP, vol 14, p 86
50. Ibid
51. Document N11, pp 81–82, 88

and his differences with the Ministers over their grandiose confiscation plans, which still included the confiscation of all land north of the Tauranga–Raglan line as far as south Auckland.[52]

5.2.4 The pacification hui, 5–6 August 1864

So far, the dispute between Grey and his Ministers over the capitulation of the Tauranga Maori had been fought by their proxies. But now the leaders themselves joined the fray. The surrender on 24 and 25 July raised the larger question of where they were to be located, along with loyal Maori and the military settlers, and the issues between Grey and his Ministers over the extent and nature of the Crown's taking of land in the region were still unresolved. Fox had told Rice on 19 July that, once the restoration of peace allowed the Government to deal practically with the issue, land would be assigned to surrendered Maori under Crown grants. He had said that the Government did not intend to take land on the eastern side of the harbour; surrendered Maori would be able to settle there, or on land to be assigned to them on the harbour's western side.[53] Whitaker enlarged on Fox's statement on 28 July, following Greer's decision temporarily to locate the surrendered Maori at Otumoetai. In Whitaker's view, 'the wishes of the Natives should be consulted, so far as they were not inconsistent with the location of the Military settlers at such points'. He considered that 'the land allotted to them should be held under Grants from the Crown, and not in common', in which case the Government would be prepared to provide assistance for dwellings, implements, and seeds.[54]

Though Grey continued to press his Ministers to define the extent of the land they wished to confiscate at Tauranga, they merely promised to do so when they met with him there 'as has been arranged'.[55] Meanwhile, Grey had decided to accept Enoka's invitation to take the formal surrender of Tauranga Maori in person. He and Cameron sailed for Tauranga on HMS *Miranda*. Fox and Whitaker followed in the Government gunboat *Sandfly*,[56] and all arrived together on 4 August. The Ministers were undoubtedly keeping an eye on Grey to try to ensure that his peace settlement with Tauranga Maori did not prejudice their plans for confiscation.

All of them attended what has been called the 'pacification hui' at Te Papa on 5 and 6 August. The proceedings and speeches were reported in the Auckland newspapers[57] and subsequently in official papers. Grey reported to Cardwell on the evening of 6 August, briefly recounting the events. He said that, with the exception of 35 persons, all 'Natives in this

52. Grey to Cardwell, 29 July 1864, BPP, vol 14, p 89
53. 'Further Papers Relative to Terms of Peace and Confiscation', 19 July 1864, AJHR, 1864, E-2, p 79
54. 'Further Papers Relative to Terms of Peace and Confiscation', 28 July 1864, AJHR, 1864, E-2, p 79
55. Grey, memorandum, 29 July 1864; Whitaker, memorandum, 29 July 1864, AJHR, 1864, E-2, p 80
56. Document A23, p 23
57. *Daily Southern Cross*, 10, 17 August 1864; *New Zealander*, 8, 17 August 1864; *New Zealand Herald*, 8 August 1864 (doc M9, pp 134–137; doc A23, pp 25–27)

district who have been in arms against us . . . made a public and absolute submission to the Queen's authority, unreservedly relinquishing the whole of their lands as forfeited'. Grey referred to the honourable way in which Maori had conducted the war, 'neither robbing or murdering, and always respecting our wounded'. He had promised them that, 'in as far as circumstances would admit of, they should be generously treated', and he expected to have another meeting 'almost immediately', when he hoped that a satisfactory arrangement would be made over their lands. In a postscript, Grey acknowledged the 'valuable assistance' of General Cameron, and claimed that his Ministers had aided him 'in the most cordial manner' and were in full agreement with the promises he had made that day regarding the land of Tauranga Maori.[58]

Grey enclosed those promises in his dispatch, as well as brief translations of the korero by Henry Clarke and E W Puckey. These remain the only official record of the speeches at the hui,[59] though they appear to be by no means a comprehensive record and clearly omit a large part of the korero. Owing to this lack of detail, it is impossible to know precisely what transpired, particularly regarding the course of the discussion among Maori. And when it comes to gauging Maori understanding of the terms of surrender and its implications for the subsequent confiscation, this uncertainty assumes great significance.[60] However, several reports in Auckland newspapers throw additional light on the proceedings, and we refer to these below.

Clarke and Puckey recorded brief translations of speeches by Taka, Enoka Te Whanake, Hokohoko, and Te Harawira. A fifth speaker, Raniera Te Hiahia, apparently interrupted Hokohoko after he said, 'The land also I give up to you.' But there is no record of why Raniera did this or of what he said. Taka, Te Hiahia, and Hokohoko all began their speeches by welcoming the Governor, who they referred to as their 'father'. They reiterated their surrender and stressed that they would thereafter remain loyal. As Enoka put it: 'This is our firm resolution – we will not return again to anything that is evil. This is the declaration we wished to make to you personally. This is a second declaration. The first was made to the Colonel, when we gave up our guns. This is our second submission.' Enoka also asked both for the return of the prisoners taken at Pukehinahina and Te Ranga, who were held at Kawau Island, and that he not be required to carry a pass when going about Tauranga.

The reports of all the speeches except Taka's mention land. Hokohoko said: 'The land also I give up to you.' Te Harawira said: 'We have come in and given up our guns and powder, ourselves, and the *mana* of (authority over) our land. Answer us upon all these points.' Enoka said: 'I have given up the *mana* of my land to you; it is in your hands.' Grey then asked whether these were the views of the whole meeting. Having been assured that they were, he asked 'to be further enlightened with respect to the *mana* of the land'. Te Harawira replied: 'What we mean by the *mana* of the land being given up to you is, that you may consider the

58. Grey to Cardwell, 6 August 1864, BPP, vol 14, pp 96–97
59. George Grey, 'Notes of Speeches at the Pacification Hui', 5–6 August 1964, AJHR, 1867, A-20, pp 5–6
60. See 'Papers Relative to Affairs at Tauranga', AJHR, 1867, A-20

mana of the land yours. You may occupy it. Permit us to do so or not, as you please.' Still unsure, Grey pressed for a further explanation. Te Harawira replied: 'I mean that you are to hold the land as your own, and to do what you like with it. When we made our submission to the Colonel, we gave up our arms and ourselves. The question about the land was left for you to decide; the decision, therefore, rests with you.'[61]

In order to understand these statements about 'the mana of the land', it is necessary to consider them in light of the way in which Maori viewed their relationship with the land, which they understood as one of guardianship rather than ownership in a Western, individualistic sense. Being a guardian and caretaker of the land was an integral part of the mana of a rangatira, as was being a protector and defender of the tribe. In a situation such as that which existed in Tauranga following the Maori surrender in 1864, the need to compromise would have been apparent. It must have seemed to those rangatira who spoke at the pacification hui that the best way to protect their people would be to invite the Governor to share in the responsibility of caring for the land and its people. This, in our view, is what they meant when they spoke of giving the mana of the land to Grey – they were sharing some of their authority with him in the expectation that he would behave like a rangatira, and act in the best interests of the people.

After hearing the rangatira talk about the 'mana of the land', Grey and his Ministers 'conferred together', clearly at odds over precisely how much land should be taken.[62] Unable to agree on the matter, Grey concluded the first day of the hui by having Puckey translate into Maori a short, hastily prepared, statement. In it, Grey said that he understood Te Harawira to be offering an 'absolute and unconditional submission . . . to the Queen's authority,' and promised that:

> in as far as circumstances will admit of, you shall be generously dealt with. You will, for the future, be cared for in all respects as other subjects of the Queen; and the prisoners taken at Pukehinahina (Gate Pa) and Te Ranga shall be allowed to return to you, if you undertake to be responsible for their future good conduct.[63]

Clarke and Puckey's notes do not record the actual number of Maori present at the hui or their hapu allegiances. Certainly, many who had survived the battles of Tauranga were absent, including at least 30 who had not surrendered and who were the subject of a panui issued on 16 August to 'come in and give up their arms within twenty-one days'.[64] (Among these were the 'unsurrendered rebels' of Pirirakau and at least five Waitaha.[65]) Nor was the important Ngai Te Rangi chief Hori Tupaea present.[66]

61. 'Notes of Speeches at the Pacification Hui', 5–6 August 1864, AJHR, 1867, A-20, p 5
62. *New Zealander*, 8 August 1864, p 3 (doc A23, p 25)
63. George Grey, 'Notes of Speeches at the Pacification Hui', 5–6 August 1864, AJHR, 1867, A-20, p 5
64. George Grey, 'Proclamation, No 7', 16 August 1864, AJHR, 1867, A-20, p 6
65. Document K25, p 51
66. Document A23, p 24

Further information on the first day of the hui comes from the Auckland press. According to the *New Zealander*, there was 'disrespect shown to Ministers by natives. They salute the Governor, the General, and Mr H Clarke (acting as secretary), but do not recognize the Hons Fox and Whitaker who sit by His Excellency.'[67] As Clarke and Puckey's notes show, all the speeches were directed to Grey, and any decisions regarding the land were left to him. It seems appropriate to conclude that Tauranga Maori, having already dealt with the Governor and the general, or their agents, and being aware that they were likely to get a better deal from them over the forfeiture and return of their land, preferred to deal with them alone.

On the evening of 5 August, Clarke, acting on instructions from Fox, entered into negotiations with 'the rebel Natives' to persuade them to nominate an area of land for the Crown to take. As he reported to Fox two days later:

> In obedience to your instructions, I held a meeting on Friday night with the rebel Natives who have come in and submitted, for the purpose of endeavouring to ascertain their wishes on the subject of the land which the Governor should retain as a satisfaction for their having joined in the rebellion, and carried arms against Her Majesty's troops. After a discussion of several hours, which was continued on the following morning, they unanimously declined to adopt any other course than to leave the entire settlement of their lands to his Excellency the Governor, as they had declared at the public interview with him on the previous day, and to receive back from him so much as His Excellency might think proper to restore.[68]

On August 6, after further discussion, Grey delivered his decision to Maori in the following terms:

> At present I am not acquainted with the boundaries or extent of your land, or with the claims of any individuals or tribes. What I shall therefore do is this:—I shall order that settlements be at once assigned to you, as far as possible in such localities as you may select, which shall be secured by Crown Grants to yourselves and your children. I will inform you in what manner the residue of your lands will be dealt with.
>
> But as it is right in some manner to mark our sense of the honourable manner in which you conducted hostilities, neither robbing nor murdering, but respecting the wounded, I promise you that in the ultimate settlement of your lands the amount taken shall not exceed one-fourth part of the whole lands.
>
> In order that you may without delay again be placed in a position which will enable you to maintain yourselves, as soon as your future localities have been decided, seed potatoes and the means of settling on your lands will be given you.
>
> I now speak to you, the friendly Natives. I thank you warmly for your good conduct under circumstances of great difficulty. I will consider in what manner you shall be rewarded for

67. *New Zealander*, 8 August 1864, p 3 (doc A23, p 25)
68. Clarke to Fox, 7 August 1864, AJHR, 1867, A-20, pp 6–7

your fidelity. In the meantime, in any arrangement which may be made about the lands of your tribe, your rights will be scrupulously respected.[69]

In Grey's dispatch to Cardwell the same day, he stated that he had received the forfeiture of all the surrendered rebels' land.[70] This tends to confirm that, at this stage at least, Grey believed he was in the process of obtaining a cession, as per Cardwell's earlier instructions. However, the difference between a cession and a confiscation was not an issue that was debated between the Crown's agents and Tauranga Maori, though it certainly occupied the minds of Grey and his Ministers. What did quickly become the subject of disagreement between Maori and the Crown was the amount of land that the Government would take and the amount that Grey had promised to return.

5.2.5 Negotiations in the aftermath of the pacification hui

The day after the pacification hui, Grey and Cameron left for Auckland. Fox and Whitaker remained at Tauranga for a further week, ostensibly to arrange with Ngai Te Rangi the sites that would be reserved for them. They did not report on their activities, but there was some speculation on the subject in the Auckland newspapers. The *New Zealander* reported that the Ministers, accompanied by Greer, Clarke, Rice, and 'some fifteen or twenty natives', took a trip up the western arm of the harbour on the *Sandfly*.[71] According to this account, the Maori present said that they wanted to be settled in the vicinity of the troops, at Te Papa and Otumoetai, as protection against Taraia's Hauraki people, though Matakana Island was also mentioned as a possible site. The expedition paused at Te Puna, where 'a plan of the territory was sketched, and the natives appended their signatures to the respective blocks owned by them'. Te Puna was said to be 'an extensive piece of good agricultural land, and well adapted for cultivation and possession by the Maoris or [for] opening up as a European settlement'. The *New Zealander*'s correspondent estimated that there were some 150,000 or 200,000 acres in the neighbourhood, and he noted that boundaries would have to be decided and surveys made before the Government took its one-fourth 'as utu'.

A report on the expedition in the *Daily Southern Cross* recorded that its main purpose was to allow the Ngai Te Rangi chiefs to point out spots where they wanted to be settled (on the assumption that the rest of the land would be confiscated) and to show the boundaries of the district 'belonging to the Ngaiterangi tribe'. We set out these boundaries here, since they were similar to the boundaries of the 'Ngaiterangi' lands described in the 18 May 1865 Order in Council that confiscated the Tauranga district:

69. George Grey, 'Notes of Speeches at the Pacification Hui', 5–6 August 1864, AJHR, 1867, A-20, pp 5–6
70. Grey to Cardwell, 6 August 1864, BPP, vol 14, pp 96–97
71. *New Zealander*, 17 August 1864

> The plans of the district owned by the Ngaiterangi tribe show that it begins on the north at a place on the coast called Nga Kuri, on the other side of Katikati; then runs in an irregular line to the Aroha mountain; thence following the range of hills in a south-westerly direction to the range above Wairere. It is bounded on the south by another range of hills – a very prominent one in the chain being Poutihi; thence running on the south side of the Otawa range to the Wairakei – the boundary line between the Ngaiterangi territory and the district belonging to the Arawas. The east coast forms the eastern boundary, with Flat Island [Motiti] a few miles distant.[72]

On 15 August, the *Sandfly* returned to Auckland with Whitaker, Fox, and Clarke on board, along with 18 Ngai Te Rangi chiefs, no doubt including many or most of those who had been on the trip up-harbour. Once in Auckland, those chiefs entered into an agreement to sell the Te Puna–Katikati blocks to the Crown. We discuss this sale in chapter 7.

As far as can be ascertained, all the Tauranga Maori who went to Auckland were loyalist Ngai Te Rangi. They included some who had attended the Kohimarama conference (such as Te Mutu), some who had been made assessors for the resident magistrate (such as Parera), and some who had acted as guides for the imperial forces at Pukehinahina (such as Raniera).[73] On the way to Auckland, the party visited Grey at his retreat on Kawau Island, where the Governor and five Tauranga Maori who had been held on the island since being captured at Pukehinahina and Te Ranga joined the *Sandfly* for the remainder of its voyage. Once in Auckland, the prisoners were freed, in accordance with the promise made by Grey at the pacification hui.[74]

At a meeting in Auckland on 18 August, Whitaker and Fox made various promises to the Tauranga chiefs and a deposit was paid for the sale of the Te Puna–Katikati blocks. The chiefs were assured that surveyors and European settlers would be sent, roads commenced with local Maori labour, and Crown grants issued to them for their land.[75] Finally, they were promised that inalienable reserves would be established for them at Ohuki, Matapihi, Rangiwaea, Matakana, and Motuhoa, and that other reserves would be set aside as compensation for lands lost as a result of the confiscation and purchase.[76]

At this meeting, it also seems likely that an agreement was reached to pay an annual pension totalling £100 to a group of 50 loyalist chiefs. This pension was paid every year until 1925, when the last of these chiefs died. Only chiefs who had not taken part in the war qualified for a share of the £100, and only eight chiefs received a share each year. When one of those chiefs died, another of the 50 took their place. The original eight to receive the pension

72. *Daily Southern Cross*, 16 August 1864

73. Ibid, 22 August 1864, p 4 (names 18). According to the *New Zealander*, 16 August 1864, p 3, only 14 travelled with Grey. Six of the eight named chiefs who had met Grey on 14 May were among those listed by the *Daily Southern Cross*: see doc A23, p 29, fn 126.

74. George Grey, 'Notes of Speeches at the Pacification Hui', 5–6 August 1864, AJHR, 1867, A-20, p 5

75. Theophilus Heale, 'Memorandum . . . on Tauranga Affairs', 27 June 1865, AJHR, 1867, A-20, p 14

76. Document A2, p 41

were Raniera Te Hiahia, Wiremu Parera, Hohepa Hikutaia, Tamati Manuao, Tomika Te Mutu, Turere, Arama Karaka, and Rawiri Taipari. Except for Taipari, all were amongst the group that travelled to Auckland with Whitaker and Fox. Enoka Te Whanake was later denied a share in the pension for his part in the fighting. The pension and other promised benefits were clearly part of the 'reward for . . . fidelity' promised by Grey to the loyalists at the pacification hui.[77]

5.2.6 Interpretation of Grey's promise to return three-quarters of the district

Grey's 6 August 1864 promise to Tauranga Maori to return three-quarters of the district has become the subject of endless controversy, including counter-arguments by the claimants and the Crown before us. It is clearly desirable that we come to firm conclusions about it. But this is difficult because Grey's statement was highly ambiguous. His promise not to take more than 'one-fourth of the whole lands' was addressed to the 'hostile Natives' who had surrendered. He then addressed the 'friendly Natives', promising that he would 'consider in what manner you shall be rewarded for your fidelity' and stating that in 'any arrangements which may be made about the lands of your tribe your rights will be scrupulously respected'.

Yet, the official line of interpretation, beginning with Grey and his Ministers, has generally assumed that the promise not to take more than 'one-fourth of the whole lands' applied to all Maori land in the Tauranga district, including that belonging to loyal 'Ngaiterangi'. That was certainly the basis on which the Crown eventually took one-quarter of the whole district in a single 50,000-acre block, irrespective of the rights of any loyal 'Ngaiterangi' in that block. Nevertheless, at times after the hui, some officials and newspapers did interpret the promise as applying only to surrendered 'Ngaiterangi'. Writing to the Native Minister in September 1865, James Mackay said: 'When the Ngaiterangi surrendered at Tauranga in August, 1864, they agreed to give up permanently one-fourth of all rebel lands to the Government, and to sell for two shillings an acre (I believe) a large block extending from Te Puna to Katikati'.[78]

When Grey's statement was reprinted in the Auckland press, two of the papers took different views of its meaning. The *New Zealand Herald*, having estimated the 'territory of the Tauranga or Ngaiterangi tribe' at 400,000 acres, concluded that the 'amount therefore to be confiscated, one-fourth, will be ample for the purposes of military settlement and all the objects contemplated by the Government – while the natives themselves will be left with a large tract'.[79] The *New Zealander*, on the other hand, believed that the return of three-quarters of the land applied only to the surrendered rebels, and was an unduly lenient measure:

> They are received back in our midst, and permitted to enjoy all the privileges of faithful, loyal British subjects – to take back three-quarters of their possessions, and, moreover to

77. Clarke to Native Minister, 30 December 1864; Hopkins Clarke to H T Clarke, telegram, 21 October 1872; Native Under-Secretary to clerk of court, Tauranga, 22 June 1925 (doc 01)
78. Mackay to Fitzgerald, 16 September 1865, AJHR, 1867, A-20, p 16
79. *New Zealand Herald*, 8 August 1864

receive the means of subsistence from the very hands against which they have been waging war.[80]

In May 1867, nearly three years after the pacification hui, the civil commissioner at Tauranga, Henry Clarke, decided that, because there were so many conflicting statements about the precise arrangements made by Grey, he would make a condensed report on the matter, based mainly on papers in his office. He recounted the main details of the 'great Ngaiterangi "peace making"', starting with the proceedings on 5 August 1864 and concluding with Grey's statement to the reassembled hui on 6 August, when:

> His Excellency the Governor accepted the surrender of the Ngaiterangi upon their terms; but in consideration of their honourable conduct during the war, and their kindness to our wounded who were left in their hands, he would restore to them three-fourths of their land, retaining one-fourth as a punishment for their rebellion. This was the exact position in which the case stood at the close of the meeting with His Excellency the Governor.[81]

Clarke's rendering of the promise to confiscate one-quarter of the land and return the remaining three-quarters appears to refer to the surrendered 'Ngaiterangi'. However, his statement did not resolve the confusion. As we indicate below, in practice the promise would be applied to all 'Ngaiterangi' and to the whole of the Tauranga district.

If there was confusion among Europeans as to the meaning of Grey's promise, we can safely assume that Tauranga Maori were also confused. Those 'friendly Natives' who stood by the Crown during the Tauranga war, assisted with the surrender negotiations, and were promised that their rights would be scrupulously respected could have assumed that their land would not be taken at all. But we cannot be sure what Tauranga Maori made of Grey's promise to return three-fourths of the lands, especially since there is no record of how his statement was translated into Maori at the hui. According to the *Daily Southern Cross*, Grey's statement was read out by Puckey, who presumably interpreted it into Maori, although the newspaper merely reprinted the English version. There are no reports of Grey's statement being discussed, other than in a brief speech by Te Harawira, who said: 'Your speech is very good; and what has been written in the letter, up to the finishing of it, was all good. It will also be very good when you point out our lands for us – to go bye-and-bye and point out our own lands.'[82] After this, the hui concluded, and Grey shook hands with the leading chiefs.

There is some subsequent evidence that Maori present at the meeting understood that Grey had promised not to take more than a quarter of the rebels' land. In February 1866, a hui was held between the Defence Minister, Colonel Theodore Haultain, and Tauranga

80. *New Zealander*, 17 August 1864
81. Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p 62
82. 'His Excellency's Reply to the Address of Ngaiterangi Tribe', July 31, *Daily Southern Cross*, 10 August 1864 (doc M9(c)(47))

Maori.[83] When asked if they were aware of the boundaries of the by-then-confiscated district, Enoka Te Whanake assured Haultain that they were:

> All I gave at the surrender was from Katikati and along by the mountains to Wairake [Wairakei]. I explained to the Governor that there were certain lands at Katikati disputed by the Thames Natives. The Governor replied: Give me the land; bye and bye I will give you every third acre, and keep the fourth acre. The fourth acre was taken for the sin (*hara*) I had committed, my land only was taken because I had sinned: it was not taken from the men who did not fight. The Governor said, let there be only one piece (ie of land). I objected, and said it would not be just that another should suffer for me: let me pay with my property at Katikati and Wairake. Also, those who own the forest, let them do likewise. Then the *mana* of the land was given to the Governor, and the conversation ended; I have repeated all that was said then.

This suggests that there was more discussion – and disagreement – at the August hui than is recorded in the surviving documents.

When Haultain reminded Enoka and the others assembled that 50,000 acres would be required, being one-quarter of the estimated 200,000 acres in the district, Enoka asked: 'Why has the Governor raised his demands? Why has the amount increased?' Nor was Enoka alone in questioning the area of land to be taken. Taka asked: 'How many men were in arms, that the Governor should take so many acres?' It is clear that Enoka and others at the February 1866 hui expected both that the confiscation would be applied only to those leaders and communities that had fought against the British and that those communities would lose every fourth acre of their lands.

Nor did the matter rest there, since about this time Enoka wrote to Grey, asking him 'what the intentions of the Government were towards their lands'.[84] We have not found that letter (or Grey's reply), and we have to rely on the summary of their correspondence in the *Daily Southern Cross*. According to this, Grey assured Enoka that he 'would strictly and honestly carry out the treaty which he made with them in August, 1864'. Grey then quoted the whole of the statement that he had made to Tauranga Maori on 6 August. On 26 March 1866, Enoka's letter and Grey's reply were read out by the interpreter, Gilbert Mair, at a hui at Te Papa that was attended by Grey, Whitaker, and, on the Maori side, Enoka, among others. The *Daily Southern Cross* recorded the scene as follows:

> After the reading of this letter, breathless silence prevailed for a considerable time, when Te Harawira [also a speaker at the 5–6 August hui], who stands prominently forward as the defender of the rights of the disaffected, rose, and wanted to know if that was all they had to talk about, – meaning the letter to Enoka. Mr Mair, at the suggestion of His Excellency, told

83. 'Proceedings of Meeting with the Tauranga Natives', 26 February 1866, AJHR, 1867, A-20, pp 19–20
84. *Daily Southern Cross*, 4 April 1866 (doc M9(d)(1))

him that the letter was written as an answer to Enoka's letter to the Governor. This gave rise to an angry scene of cavilling on the part of Harawira and Enoka, who could not, or rather would not understand the nature of the letter. The dogged obstinacy of the natives now became quite visible, and those who were eye-witnesses to what was going on manifested great impatience, which caused the Governor to order the chart for Tauranga to be brought forward. So soon as the natives saw this, down went their heads, and their countenances told the feelings of wrath and anger which was at that particular moment working on their minds.

Grey's officials, Mair, Rice, and Charles Davis, then explained the chart, pointing out the boundaries of the 200,000-acre confiscation district and the proposed 50,000-acre confiscated block, which the Governor was taking 'in conformity with the arrangement which had been come to in August 1864'. At this:

> Enoka rose and said that he had been taken by surprise, and strongly professed to be ignorant of the meaning of all this. How were they to ascertain whether it was 50,000 acres, or what quantity was in the block? To him it was very unsatisfactory; all that he understood at this treaty in 1864 was, that it was simply the 'mana' of the land that was to be ceded over to the Government as a satisfaction for the part they had taken in the rebellion. Mr Davis again explained to him the nature of the proclamation, carefully and critically explaining the intentions of [the] Government. Enoka again arose, and manifested a very restive and determined attitude, which caused His Excellency to come forward, and, without the aid of an interpreter, tell them, in plain and intelligible language, the kindly feeling which the Government had shown them at the time peace was established, and then reminded them of the terms which he then agreed should be entailed upon them, and which was, among other conditions, that the Government should receive one-fourth of the lands in Tauranga. He now called on them at once to assent to his proposition, otherwise Government might take possession of the whole of their lands . . . The circumstance had a most favourable tendency in bringing the natives to a sense of their position, and the kind but firm hand in which his Excellency, through Mr Davis, reasoned with them, explaining on the chart his intentions to secure an interest to those natives who had been friendly during the war, but who might have claims within the block which he had agreed to take as one-fourth of the whole. After this assent was obtained, which appeared to be satisfactory.[85]

Despite the patronising tone and possibly incomplete nature of this report, it provides clear evidence that Enoka and the other chiefs who attended the August hui had interpreted Grey's promise very differently from Grey himself. In their view, they had conceded that one-fourth of the rebels' land, not one-fourth of the Tauranga district as a whole, was to be confiscated.

85. Ibid

Clarke also commented:

> The Natives in their discussion of the matter showed a very different spirit to that manifested in 1864, and it was not until His Excellency told the Natives that he would resort to extreme measures if they would not comply that they succumbed and agreed to give up 50,000 acres.[86]

The March 1866 hui at Te Papa was held some nine months after the Tauranga district had been proclaimed by Order in Council to be subject to the provisions of the New Zealand Settlements Act 1863. Clarke's comment shows that, by early 1866, Grey was prepared to take the confiscated block by whatever means necessary, his earlier hopes of cession plainly having been superseded. We discuss this matter further in the next chapter.

5.3 Claimant and Crown Submissions

5.3.1 Claimant submissions

In the closing submission made on behalf of a number of the Tauranga Moana claimants (the joint submission), counsel argued that, during the surrender negotiations, Tauranga Maori still in arms were given to understand that in surrendering they would be placing the mana of their land in the Governor. This they did at the pacification hui, where Grey introduced his plan to take one-quarter of the land. That plan, counsel said, was understood by those who had surrendered to apply to only a quarter of their land, not a quarter of all Maori land in Tauranga.[87] The Crown's opposite view on this point, counsel later added, lacked 'any coverage of the Maori perceptions of Grey's promise'.[88]

Claimant counsel submitted that the acquiescence of Tauranga Maori in the Crown's confiscation plan was explicable because 'Maori were acting under duress' at the time. When Maori were discussing the terms of peace, counsel said, the threat of renewed war was ever present; neither the military threat to Maori nor the Crown's preparedness to adopt tactics of intimidation should be underestimated. This situation, according to the joint submission, compounded the original Treaty breach which occurred when the Crown attacked Tauranga Maori.[89]

Most other counsel adopted the arguments made in the joint submission or made similar submissions. However, some additional points were made by some. Wai 227 claimant counsel, for instance, added that, apart from Mangapohatu and Te Wanakore, Pirirakau remained 'unsurrendered rebels', did not attend the pacification hui, and 'did not agree to a cession of

86. Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p 62
87. Document N11, p 93
88. Document P8, p 25
89. Document N11, pp 93–94

their lands'.[90] Wai 659 claimant counsel noted that 14 Ngai Tamarawaho, including their rangatira Paraone Koikoi, surrendered on 24 July 1864, but she emphasised that the hapu lost most of its land when the confiscated block was taken. This occurred, she submitted, because Grey made a deal with Ngai Te Rangi to preserve their land at the expense of Ngai Tamarawaho. Counsel concluded that: 'In Treaty terms, the relevant issue is that the Crown offended against the Treaty by waging war against Tauranga Maori in the first place. In those circumstances, there can be no justification for subsequently taking land.'[91]

5.3.2 Crown submissions

The Crown's closing submissions referred to the surrender negotiations in some detail. The ongoing differences between Grey and the Whitaker Ministry were acknowledged, as was Cardwell's instruction to Grey to seek a cession rather than a confiscation of Maori land. This, Crown counsel said, gave Grey 'the authority he needed to limit the amount of land that was to be taken'.[92]

In relation to the pacification hui, the Crown selected four issues for detailed discussion:

- the significance of Clarke's overnight discussion with Maori on 6 August over the precise area of land to be ceded;
- what was intended and understood when Maori gave the mana of their land to the Governor;
- the interpretation of Grey's promises of 6 August; and
- the position of Maori who did not attend the hui.

On the first of these points, the Crown assumed that Clarke, at the instigation of the Ministers, tried to get agreement from Maori about which piece of land they would yield to the Crown. The Crown attributed 'the failure to agree' to the fact that 'surrendered rebels' owned land in common with 'loyals'. On the question of what was intended by the surrender of the mana of the land by the Tauranga chiefs, the Crown submitted that Grey was given 'power to make decisions about the future of the land (not the land itself)'. The Maori understanding of what giving up the mana of the land meant was alleged to be in accord with Cardwell's notion of a cession.[93]

On Grey's promises of 6 August, the Crown reminded us that: 'The terms of that speech are important because it has become a benchmark by which future Crown actions are now being judged.'[94] Having examined Grey's speech in some detail, Crown counsel submitted that, because Clarke was unable to get agreement over the area of land to be ceded and did not know how much land was available, Grey had to fall back on 'a defined percentage of

90. Document N10, p 13; doc N9, p 14
91. Document N23, p 26
92. Document O2, p 36
93. Ibid, pp 38–39
94. Ibid, pp 39–40

the total (undefined) Tauranga Moana lands'. But this created another problem, in that no Maori present could know whether their land would be taken, though Grey tried to reassure them by promising that settlements would be immediately assigned to them and secured by Crown grants. Despite being placed in separate paragraphs and addressed to surrendered rebels and loyal Maori respectively, these promises, the Crown maintained, were directed equally to both groups. Also intended for both groups was Grey's promise that 'in the ultimate settlement of your lands the amount taken shall not exceed one-fourth part *of the whole lands*' (Crown emphasis). By this, the Crown continued, 'Grey plainly meant to keep a quarter of *all* "Ngaiterangi" lands' (emphasis in original).

In discussing the fourth issue – the position of Maori who did not attend the pacification hui – the Crown noted an official estimate at the time that only 30 Tauranga Maori did not attend, the majority of whom were unsurrendered Pirirakau. Otherwise, the 'most notable single absence . . . was undoubtedly Hori Tupaea', who, it was noted, had taken a neutral stance during the Waikato and Tauranga wars. The Crown did not consider these absences significant, since the hui was 'aimed at achieving a cession of land, not at effecting confiscation under the [New Zealand Settlements Act 1863]. Ultimately, such a cession was made collectively by those in attendance at the hui.'[95]

5.4 Findings of Fact

Plainly, considerable differences exist between the claimants and the Crown in their interpretations of the surrender and pacification negotiations. The Tribunal must reach a conclusion on these matters, for they influenced the final form of the Tauranga confiscation. In doing this, we have been mindful of two points that were noted earlier. The first is that it was not always clear to Maori who was acting for the Crown, both on the local and on the national levels. Locally, there were officials such as Rice working for the military and the Governor, and others such as Mackay and Baker who were acting for the Ministers. Meanwhile, nationally, Grey and his Ministers (at least while the Whitaker Ministry remained in office) had their own aims, particularly on the amount of land to be taken at Tauranga (and elsewhere). Though Tauranga Maori were to some extent aware of the bickering, they must have been confused as to the real intentions of the Crown and where the final authority lay. The evidence that we have suggests that Maori had more faith in Grey, as the Queen's representative, than in the Ministers who were constantly shadowing him.

The second point is that the surviving accounts of the surrender negotiations and the pacification hui have their limitations. Most of the official accounts were written by persons with different agendas and different masters. Nor were the Auckland newspaper accounts,

95. Document 02, p 41

written by anonymous correspondents, free from bias. Most of these records failed to distinguish the hapu and iwi affiliations of the Maori participants, who were usually lumped together as 'Ngaiterangi' or 'Tauranga natives', or 'loyal' or 'friendly natives'.

With those points in mind, we have reached the following three conclusions:

- First, despite the fragmentary evidence it is clear that, in the preliminary peace negotiations conducted by Rice and loyal Ngai Te Rangi, the unsurrendered 'rebels' were given to understand that the Governor (and perhaps the general) would control the disposal of their lands but, in doing so, would be generous with them and would require little, if any, land to be forfeited.
- Secondly, we understand that, at the surrender hui of 24 and 25 July, those who surrendered, handed in their arms, and signed the 'loyalty certificates' saw themselves as affirming their loyalty to the Crown, and also understood, as stated in the certificates, that the disposal of their land was to be left to the Governor or the general.
- Thirdly, and most importantly, we think that the so-called surrender of mana on the first day of the pacification hui was not unconditional but was rather an invitation to the Crown to share in responsibility for the wellbeing of Tauranga Maori. Grey's statement in response was so important at the time that it was sometimes referred to as the 'Ngaiterangi treaty'. But it was a 'treaty' recorded only in English, since there is no extant Maori text. And without a Maori text, we cannot know definitively what the assembled Maori at the hui understood it to mean.

The Crown submitted to us that Grey's statements applied to all 'Ngaiterangi', loyal or rebel, and to all of their lands: this meant all of the Tauranga Moana district subsequently included in the Order in Council of May 1865. We accept that this may have been the Crown's intention at the time, although some ambiguity remained as late as 1867, as indicated by Clarke's statement quoted above. However, we do not agree that this was the understanding of Tauranga Maori at the pacification hui, or that it has been since. On this point, we substantially agree with the claimants' joint submission that 'Maori understood Grey to say that the "rebels" only would lose a quarter of their lands'.[96] Bearing in mind the lack of a Maori text or a full record of the speeches at the hui, we think it reasonable to infer that Maori who had surrendered thought that the promise addressed separately to them applied only to them. The statements of Enoka and others in 1866 certainly lend support to this conclusion.

Likewise, the loyalists were addressed separately: they were promised 'reward' for their 'fidelity' and assured that, in any arrangement about their lands, their rights would be 'scrupulously respected'. We think it appropriate to infer that they expected not to lose any land. Confiscation was supposed to be applied to those in rebellion; there was no authority, either in Grey's 'treaty' with 'Ngaiterangi' or in the Treaty of Waitangi, for confiscating the land of Maori who were loyal to the Crown. Having reached that finding, we add that the confiscation

96. Document N11, p 91

of the loyalists' land was mitigated to some extent by their being awarded reserves in the 50,000-acre confiscated block and the purchased Te Puna–Katikati blocks. However, the allocation of reserves to 'loyalists' is itself the subject of allegations of Treaty breach, and we discuss those matters in chapters 7, 9, and 10.

5.5 Chapter Summary

The main points in this chapter are:

- In preliminary peace negotiations between the Governor, Government officials, and Tauranga Maori before the pacification hui, Maori offered to surrender the 'mana of the land' to Grey. The Governor in turn undertook to return most of the surrendered land to Maori. This provided the basis for Grey's promise at the pacification hui of 5 and 6 August 1864 to return three-quarters of the Tauranga district to Maori.
- There were divergent understandings of the terms agreed to between Maori and the Crown at Tauranga in June, July, and August of 1864. Most Crown officials claimed that part of the agreement was that the Crown would take and retain a quarter of the whole district. However, Maori understood that only a quarter of the land of the 'rebels' would be taken. From the available evidence, it is clear that Grey never acquired the consent of Tauranga Maori to take land belonging to loyalists.

CHAPTER 6

THE TAURANGA RAUPATU

6.1 Introduction

In this chapter, we come to the heart of the matter of this report: the confiscation, or raupatu, of some 214,000 acres of the Tauranga Moana district. The raupatu was effected by an Order in Council, dated 18 May 1865, issued under the authority of the New Zealand Settlements Act 1863. The raupatu was later extended to some 290,000 acres by the Tauranga District Lands Act 1868. Ultimately, the area retained by the Crown as the confiscated block was reduced to some 50,000 acres, less about 8700 acres of reserves for Maori which were located mainly between the Waimapu and Wairoa Rivers and included the Te Papa Peninsula, on which the city of Tauranga later developed. The survey of the confiscated block, and the accompanying 'bush war', are examined in chapter 9. The remainder of the confiscation district was dealt with in various ways. In the west, approximately 93,000 acres, including much fertile land fronting the harbour, was purchased by the Crown as the Te Puna–Katikati blocks in circumstances closely related to the confiscation. We discuss this in chapter 7. The remaining land, consisting of the hill country along the southern and eastern boundaries of the confiscation district, the inshore and offshore islands, and the low-lying lands around the eastern harbour, was returned to some Maori who held customary rights to it, according to the deliberations of the Tauranga district lands commissioners. We examine their proceedings in chapter 10.

Once the peace negotiations were concluded, there was a considerable delay on the part of the Government in implementing decisions on the fate of the Tauranga lands. Owing to a lack of available evidence, we do not dwell on the reasons for this at length. Instead, in this chapter, we focus on the legal mechanisms by which the Tauranga raupatu was effected.

6.2 Towards Confiscation

6.2.1 The delay in issuing the Order in Council

The Tauranga Moana lands were formally taken by an Order in Council of 18 May 1865, more than 10 months after Grey had made his promises at the pacification hui on 6 August 1864. During that time, Tauranga was in a state of limbo. Several factors possibly contributed to the delay: the process of securing agreement from 'Ngaiterangi' to the location of the land to be

taken by the Crown; the decision as to whether to impose a cession or a confiscation; and the completion of the Te Puna–Katikati purchase (discussed in chapter 7). During the later months of 1864, the Government was virtually paralysed by the ongoing row between Grey and his Ministers. Their disagreement ranged over many matters, and included the Ministers' dislike of Grey's attempt to effect a cession. On 24 September 1864, Fox wrote to Grey stating that at Tauranga there was 'very clear proof of the inconvenience and impolicy of the cession principle as opposed to that of confiscation'.[1]

On 30 September 1864, Whitaker and his Ministers tendered their resignations. As we have noted, Grey waited for nearly two months, till 24 November, before accepting them.[2] In the meantime, on 5 November, Whitaker had offered to sever the Waikato confiscation from that in Tauranga, though he did not define the district or area of land he proposed to confiscate in Tauranga.[3] This was a meaningless gesture that could clearly do nothing to bridge the gap between Grey and the Ministers. It was only after the Whitaker Ministry's resignation had been accepted and a new Ministry formed that an agreement could be reached over Tauranga. Even then, it was another six months before the Tauranga confiscation was effected.

On 24 November 1864, Frederick Weld formed what has become known as the 'self-reliant Ministry'. Weld promised, among other things, to rely on colonial rather than imperial troops – but to do so still required that a significant area of land be confiscated in order to meet the Government's obligations to military and other settlers. On 17 December, on Weld's advice, Grey issued an Order in Council confiscating 1.2 million acres of Waikato land between south Auckland, Raglan, Pirongia, and Maungatautari. Then, on 31 January 1865, Grey confiscated two blocks in Taranaki known as Waitara South and Oakura. But he did not confiscate any land in Tauranga for another four months. We have found no explanation from Grey of his reasons for this delay. The two main historical works on Grey, Rutherford's biography and Dalton's *War and Politics*, do not comment on the Tauranga situation during this period, and no evidence was presented to the Tribunal on the reasons for the delay in formally taking land at Tauranga.

6.2.2 Cession or confiscation?

One possible explanation for the delay in confiscating land at Tauranga is that Grey was still hoping to persuade 'Ngaiterangi' to cede one-quarter of the district, estimated at 50,000

1. Fox to Grey, 'Native Claim to Katikati', 24 September 1864, G17/3, no 15 (doc A23, p 32)

2. We note that on 29 September, the day before the Ministry tendered its resignation, an Order in Council was issued declaring the district of Tauranga to be a native district under the Native Districts Regulation Act 1858. Stating that native districts were 'districts over which the Native Title shall not for the time being have been extinguished', it described the boundaries of the Tauranga native district in a manner similar to the description given in the Order in Council which confiscated the district some seven months later. The Crown could not assist in explaining the purpose of the 29 September Order in Council and we have been unable to discover anything more about it.

3. Memorandum by Whitaker, 5 November 1864, AJHR, 1864, E-2A, p 26

acres, in one contiguous block as an alternative to a formal confiscation under the New Zealand Settlements Act. Yet, while Grey talked of a cession, no formal procedure to implement one was ever initiated. It is possible that Grey genuinely believed that a cession had been agreed to at the pacification hui but did not know how to implement it, especially in the face of mounting opposition from his Ministers and from Tauranga Maori.[4]

In September 1864, Government surveyor Theophilus Heale was sent to Tauranga to survey sections for the military settlers of the 1st Waikato Regiment. We discuss Heale's activities in detail in chapters 7 and 9 but note here that, by April 1865, he had surveyed the 'whole coastline of Tauranga', laid off the township of Te Puna, and subdivided land near Te Papa and Otumoetai into 50-acre and 100-acre sections. These were the lots that were promised and eventually allocated to the officers and men of the 1st Waikato. Having done that, Heale advised that 'no further surveying can be carried on with advantage in the district until a final determination is come to as to the land to be confiscated, and a settlement made of the Native land claims'.[5] In a similar vein, he declared that it was 'impossible to push the surveys with any vigour' while questions of land tenure remained unresolved.[6] And by then, a new threat to the plans for military settlement had convinced Heale that it was necessary for the Crown to confiscate the Tauranga land.

6.2.3 The Native Lands Act or the New Zealand Settlements Act?

So long as the land at Tauranga was not confiscated, it remained in native title. Since the Native Lands Act 1862 allowed European settlers to purchase Maori land once the Native Land Court had adjudicated and individualised customary titles, Europeans began to negotiate with Maori to purchase the favoured harbour-front land at Tauranga. Francis Dart Fenton, the chief judge of the Native Land Court, appears to have been keen to bring the court into operation in Tauranga, as he was able to do once a notice had been published in the *New Zealand Gazette* on 29 December 1864 applying the 1862 Act to the whole country.[7] In January 1865, Fenton instructed Drummond Hay to begin surveying the Katikati block, then under negotiation for purchase by the Crown. It seems that Fenton intended to allow the court to consider conflicting claims to the Katikati block and thus instructed that the survey be carried out, since Maori land had to be surveyed before the court could adjudicate title. We discuss the details of the Katikati purchase in chapter 7 but note here that the Crown's attempt to purchase Katikati and the adjoining Te Puna block from 'Ngaiterangi' was disputed, particularly by the Hauraki tribes. Clarke and Mackay conducted an arbitration between the two

4. Heale to Atkinson, 7 April 1865, AJHR, 1867, A-20, p 8
5. Ibid
6. Memorandum by Heale on Tauranga affairs, 27 June 1865, AJHR, 1867, A-20, p 13. The survey of the proposed Te Puna township was completed by the end of November 1864.
7. David Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), p 138

sides in December 1864, and as a result the Hauraki tribes (and others) received compensatory payments for their claims. Presumably, that arbitration and the subsequent payments averted the need for a Native Land Court inquiry. But, as we shall see, Fenton did not give up on his attempt to get the court involved in adjudicating rival claims to Tauranga lands.

The only considerable piece of land in Tauranga not held under native title was the CMS block at Te Papa, where the military were still camped, waiting to occupy the sections Heale had surveyed for them. But so long as the rest of the Tauranga lands were not confiscated, private buyers could negotiate with Maori and seek to have their bargains ratified by the Native Land Court. In April 1865, Heale reported that this process was in fact beginning. He said that Tauranga Maori, disturbed by the uncertainty of Government plans for their land, had been:

> encouraged by high authority to sell this very land, which up to January last it was universally understood was to be confiscated. Speculators, encouraged to disregard the provisions of the law by the liberality with which all classes of land claimants have of late years been treated, are now in treaty with Natives for the purchase of land in all parts of the harbour frontage. Parts of Te Puna township, surveyed in acre sections at the expense of the Government; parts of the Otumatai [*sic*] Block and other lands partly surveyed, the most valuable spots in the harbour, which must necessarily be the keys of any settlement, are now under negotiation and in the course of private survey. If such proceedings are allowed to go on, it is impossible that either the settlement or the Natives should prosper. It will clearly be impossible to settle one of the Waikato regiments if the only lands suitable for their location are suffered to pass into the hands of speculators.[8]

As that correspondence indicates, ultimately it was not competition between cession and confiscation that was important but competition between two rival modes of settlement: private settlement under the Native Lands Act and military settlement under the New Zealand Settlements Act. Heale wrote about this issue again on 27 June 1865, reiterating that the 'coming into operation of the Native Lands Act before any final arrangement was made of the Ngaiterangi lands has created further difficulty, the loyal Natives now hope to get more than 3s an acre for their lands'. Once more, Heale outlined the two alternatives, and he again advocated the remedy of confiscation and military settlement. If that was not adopted, he warned, it would be necessary to remove the 1st Waikato Regiment from Tauranga and settle them elsewhere, and 'leave the settlement of the Native land questions to the operations of the Native Lands Court'.[9]

The Order in Council providing for the Tauranga confiscation was signed and came into effect a little over a month after Heale's first recommendation. But it was not published in the *New Zealand Gazette* until 27 June, the very day of Heale's second memorandum. That

8. Heale to Atkinson, 7 April 1865, AJHR, 1867, A-20, p 9
9. Memorandum by Heale on Tauranga affairs, 27 June 1865, AJHR, 1867, A-20, p 14

memorandum, written in Wellington, reads as if the Order in Council had not yet been finalised or, if it had, as if Heale did not know that. Whatever the precise sequence of events, we believe that Heale's vigorous advocacy for confiscation and military settlement was influential in persuading Grey and the Weld Ministry to draft, sign, and gazette the Order in Council.[10]

It is also probable that Heale's arguments influenced the determination of the boundaries and the extent of the district that was formally confiscated. Heale wanted to use the front land mainly for military settlement; the back land would be returned, as part of the three-quarters of the whole district, to compensate Maori who lost land in the block that would be retained as confiscated land. To do this, Heale argued, 'it would be necessary to proclaim the whole Ngaiterangi territory under the Settlements Act, and to adjust all the land claims within it on the most comprehensive plan'.[11] Heale's neat plan of confiscating the whole district in order to return three-quarters was eventually adopted. None the less, Heale was probably not the sole author of this arithmetic; several other officials also seem to have been working on the basis of a 50,000-acre confiscated block, 50,000 acres being a quarter of the whole district. We discuss this further in chapter 9.

The confiscation of the Tauranga district put an end to any prospect of cession and enabled the Crown's officials to deal with the land as they saw fit. However, it did not put an end to the possible use of the Native Lands Act and the Native Land Court. Fenton did not easily give up his ambition to use the court to determine title to some Tauranga land, as we note in our next section, which discusses the legal mechanisms by which the confiscation was effected.

6.3 Confiscation: The Legal Context

6.3.1 Background

The confiscation of land for rebellion, sometimes accompanied by military settlement, was no new device in British history. Indeed, confiscation had been applied from late medieval times to Irish rebels in Britain's first overseas 'colony', and Oliver Cromwell established military settlements on confiscated land there. In Scotland, the estates of supporters of 'Bonnie' Prince Charlie were confiscated during the Jacobite uprising of 1745. Confiscations and military settlements were also implemented from time to time in Britain's other colonies. Grey himself settled a German military legion on conquered territory in a portion of the Cape Colony while he was Governor there.[12] When he returned to New Zealand, Grey gave his

10. Minute by Mantell on Clarke's report for Cabinet, 23 June 1865, AJHR, 1879, I-4, p 30
11. Heale to Atkinson, 7 April 1864, AJHR, 1867, A-20, p 9
12. James Rutherford, *Sir George Grey KCB, 1812–1898: A Study in Colonial Government* (London: Cassell and Company Ltd, 1961), pp 361–364

support to Premier Domett's scheme to recruit military settlers from the New Zealand and Australian goldfields, a plan which was modelled on the military settlement in the Cape Colony.[13]

The long history of confiscation in English law was a factor contributing to the imperial authorities' decision that the New Zealand Settlements Act was valid, by which they meant that it was within the powers of the New Zealand Parliament to enact, and not repugnant to the laws of England. Therefore, despite the Secretary of State's concern about the Act's consistency with the Treaty of Waitangi, the legal position was that anything done in conformity with the provisions of the Act was lawful. Whether the 18 May 1865 Order in Council conformed with the provisions of the Act was an important question in our inquiry. We outline the Act's provisions below in order to provide the necessary background to our consideration of that question.

6.3.2 The New Zealand Settlements Act 1863 and amendments

The word 'confiscation' was not used in the New Zealand Settlements Act 1863. Rather, the Act focused on the need for increased settlement as a means to promote the Government's authority and its peaceful relations with Maori. The Act's preamble stated that 'evil-disposed persons of the Native race' were 'now engaged in open rebellion against Her Majesty's authority' and that it was necessary, for the 'establishment and maintenance of Her Majesty's authority', to introduce 'a sufficient number of settlers able to protect themselves and to preserve the peace of the Country'.

As we noted in chapter 4, while the Act declared the existence of rebellion, it did not provide a comprehensive definition of it. If the Governor in Council was 'satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof' had since 1 January 1863 'been engaged in rebellion', section 2 of the Act authorised the district within which their land was situated to be declared a district under the provisions of the Act. The consequences of that were twofold. First, the Governor in Council could 'set apart within any such District eligible sites for settlements for colonization' (s 3) and, secondly, for the purposes of those settlements, the Governor in Council could 'reserve or take any Land within such District' which land would be deemed Crown land free from any title, interest, or claim of any other person (s 4). Lastly, section 5 provided that compensation would be paid to anyone with 'any title interest or claim' to any land taken. However, this was subject to subsections (1) to (5) of that section, and to section 6, which expressly disentitled certain categories of people from receiving compensation.

As we saw in our discussion of rebellion in chapter 4, section 5 of the Act identified five categories of persons who were not entitled to compensation. The first four categories comprised

13. Brian J Dalton, *War and Politics in New Zealand, 1855–1870* (Sydney: Sydney University Press, 1967), p 180

persons who had made war or carried arms against Her Majesty or Her forces, and those who had assisted such persons in any way. The fifth category, identified by section 5(5), comprised those who had not complied with the Governor's demands, made by proclamation and published in the *New Zealand Gazette*, to deliver up their arms by a certain date. The remaining category of persons not entitled to compensation was identified by section 6 of the Act and comprised anyone who had been engaged in an offence specified in section 5 who failed to 'come in and submit to trial' on or before a date specified in a proclamation to be published by the Governor in both Maori and English. The general effect of sections 5 and 6 was that those who were eligible for compensation were 'non-rebels' whose lands had been included in a district proclaimed under the Act.[14]

Sections 7 to 15 of the Act specified how compensation was to be awarded. Claims to compensation by New Zealand residents had to be lodged in writing with the Colonial Secretary within six months of the land being proclaimed a district under the Act. Non-residents had 18 months to make a claim (s 7). The Colonial Secretary was required to transmit every claim to a judge of the Compensation Court, who was in turn required to hear each claim and determine whether the claimant was entitled to compensation and, if so, the amount. The only qualification was that a claimant who was found by the court to be entitled to compensation could require the amount to be determined by two arbitrators, one appointed by the claimant and the other by the Colonial Secretary (ss 8–13). Importantly, any compensation awarded by the court was to be paid in cash, with the amount based on the claimant's interest in the land (ss 14, 15).

The final sections of the New Zealand Settlements Act were concerned with the formation of settlements in a confiscation district. Section 16 provided for the laying out of a sufficient number of towns and farms to enable grants of urban and rural sections to be made, as a matter of priority, to people whose military service was, by contract with the Government, to be repaid in that way. Under sections 17 and 18, towns and suburban and rural allotments could be laid out on the remaining land and disposed of on terms prescribed by the Governor in Council. The money raised was to be used either as Parliament directed or to pay for the 'expenses of suppressing the present insurrection', the formation of settlements, and the compensation awarded to individuals 'for losses by the said rebellion' (s 19). The final provision of the Act, section 20, authorised the Governor in Council to form settlements for colonisation on land outside a confiscation district, provided that land was owned by the Crown or by a provincial authority that sought such settlements.

14. It seems that neither section 5(5) nor section 6 entitled 'surrendered rebels' to compensation under the New Zealand Settlements Act 1863, although the Confiscated Lands Act 1867 enabled reserves to be set aside for surrendered rebels: see Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 119–120. However, no proclamations of the exact kind described in section 5(5) or section 6 were issued in relation to Tauranga, with the result that those provisions did not disentitle any Tauranga Maori from compensation.

The New Zealand Settlements Act 1863 was amended in 1864, 1865, and 1866. In addition, other legislation passed in 1866 and 1867 directly affected the operation of the Act.[15] The numerous modifications made to the Act during the four years it was used to take land show that its original policy was incapable of dealing with the various circumstances to which it was applied.

The New Zealand Settlements Amendment Act, passed in December 1864, was plainly a response to the criticisms of the principal Act made by Lord Cardwell (see sec 5.2.2). Section 3 of the amendment Act provided a sunset clause for the 1863 Act, stipulating that it would continue in force only until 3 December 1865. Section 2 empowered the Governor in Council to override the Compensation Court's decisions in order to award compensation to persons who had been refused it by the court or to increase the amount of compensation that the court had awarded.

The more extensive 1865 amendments were passed on 30 October of that year. Called the New Zealand Settlements Amendment and Continuance Act 1865, the amending Act allowed compensation to be granted in land rather than in cash in two situations: where there was agreement between the Colonial Secretary (on behalf of the Crown) and the claimant that land in the same province should be awarded to the claimant instead of monetary compensation (s 9), and where the Colonial Secretary elected to award land (s 10). Those changes facilitated the Crown's assumption of control over the compensation process, even in districts where the Compensation Court sat and notwithstanding the powers conferred on that court by the 1863 Act.[16] The amending Act also empowered the Crown to abandon its right to take a claimant's land, thereby excluding that land from a district taken under the 1863 Act and avoiding the need to pay compensation (s 6).[17] These changes, made after numerous claims for compensation had been submitted in the Waikato, were designed to limit the financial inconvenience such claims would have caused the Government.

15. Two such Acts were the Friendly Natives Contracts Confirmation Act 1866 and the Confiscated Land Act 1867. The former was directed at validating both the land return arrangements negotiated by Henry Turton (on behalf of the Crown) with Waikato Maori and the Crown grants of land made as a result. It was more generally worded than the New Zealand Settlements Act 1863, however, and validated 'all Crown Grants' made or yet to be made to Maori in satisfaction of their claims to compensation under the New Zealand Settlements Act 'and in fulfilment of arrangements made with them for this purpose by any person or persons authorised on the part of the Government of New Zealand to negotiate with them in this behalf' (s 2). The Confiscated Lands Act 1867 (enacted the same day as the Tauranga District Lands Act 1867) empowered the Governor to make reserves out of confiscated land (or other Crown land) for: Maori who had either been refused compensation by the Compensation Court or been granted compensation that the Governor considered to be insufficient (s 2); 'friendly' Maori (s 3); surrendered rebels (s 4); and educational institutions, including native schools (s 7). It also provided that the Governor could proclaim any confiscated land to be waste land of the Crown and thereby enable it to be dealt with as such, rather than in the manner provided for by the New Zealand Settlements Act (s 8).

16. For example, in its *Ngati Awa Raupatu Report*, the Tribunal concluded that many of the land return arrangements made between Crown officers and loyal Maori in respect of the Bay of Plenty confiscation district were approved by the Compensation Court, as the Act required, but without the court conducting an independent inquiry: Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 80–86.

17. The Wanganui to Waitotara portion of the Taranaki confiscated district was abandoned under this provision on 25 January 1867: Waitangi Tribunal, *The Taranaki Report*, pp 124–125.

Another effect of the 1865 amending Act was to extend the life of the 1863 Act to December 1867, thereby overriding the sunset provision introduced in 1864.[18] A number of the remaining amendments effected in 1865 related to the procedures of the Compensation Court: the court was declared to have power under the 1863 Act to determine whether a claimant for compensation had committed any of the offences or acts specified in section 5 of the Act (s7), and the time limit for submitting claims was reduced to between three and six months for persons in New Zealand (s11). Lastly, the 1865 amendment Act repealed sections 14, 15, 17, 18, and 19 of the 1863 Act and provided new provisions in their stead, the main effects of which were to enable the Governor to require recipients of compensation to hold the land or money on trust for their benefit (s15) and to grant the Governor discretionary power to determine the order and manner in which land was to be sold (s16).[19]

The 1866 amendment to the New Zealand Settlements Act authorised the Colonial Secretary to give scrip in lieu of monetary compensation for land taken under the 1863 Act (s4). It also authorised the Governor to make and grant reserves out of land taken under that Act (s5). The most important effect of the 1866 Act was to validate retrospectively any defects in the exercising of powers under the 1863 Act (and its amending Acts) by the Governor or the Compensation Court (s6):

> All orders proclamations and regulations and all grants awards and other proceedings of the Governor or of any Court of Compensation or any Judge thereof heretofore made done or taken under authority of the said Acts [the New Zealand Settlements Act 1863, the New Zealand Settlements Amendment Act 1864, and the New Zealand Settlements Amendment and Continuance Act 1865] or either of them are hereby declared to have been and to be absolutely valid and none of them shall be called into question by reason of any omission or defect of or in any of the forms of things provided in the said Acts or either of them.

Correctly interpreted, that section was apt to validate procedural defects in the conduct of the Governor or Compensation Court under the 1863 Act, as amended.[20] More serious defects, however, could be cured only by more comprehensive statutory validation. The limited scope of section 6 of the 1866 amendment Act thus provides a technical reason why the Tauranga District Lands Act 1867 was passed, that being to validate retrospectively all possible legal defects in the application of the New Zealand Settlements Act 1863 to Tauranga.

Having outlined the major features of the New Zealand Settlements Act 1863 and its several amendments, we turn now to the Order in Council of 18 May 1865, which was made under the authority of that Act. Accordingly, if the Order in Council was to have legal effect, it had to

18. This was achieved by declaring the 1863 Act to be perpetual but with the proviso in section 2 that the Governor in Council could not proclaim districts and take land for settlements after 3 December 1867.

19. Section 16 made the Governor's discretion subject to the proviso that the land was to be sold for cash and for no less than 10 shillings an acre, but that proviso was repealed one year later by the 1866 amendment Act.

20. This conclusion on the scope of section 6 was reached by the Taranaki Tribunal: See *The Taranaki Report*, p 131.

conform with the Act's requirements in all important respects. If it did not so conform, the Order in Council's purported confiscation of Tauranga Moana would be unlawful.

6.3.3 The Order in Council, 18 May 1865

The Order in Council of 18 May 1865 began by noting that, under the New Zealand Settlements Act:

> whereas by 'The New Zealand Settlements Act 1863' it was enacted, amongst other things, that whenever the Governor in Council should be satisfied that any Native Tribe or section of a tribe or any considerable number thereof, have, since the first day of January, 1863, been engaged in rebellion against Her Majesty's authority, it should be lawful for the Governor in Council to declare that District within which any land being the property or in the possession of such tribe or section or considerable number thereof should be situate, should be a District within the provisions of the said Act, and the boundaries of such District in like manner to define and vary as much as he should think fit;
>
> . . . . .
>
> And whereas the Governor in Council is satisfied that certain Native tribes, or sections of tribes, having respectively as their property or in their possession the lands hereunder described, have been engaged in rebellion against Her Majesty's authority;
>
> Now therefore, His Excellency the Governor, in exercise of the power vested in him by the said recited Act, doth hereby, with the advice and consent of the Executive Council of the Colony, declare that from the date thereof, all the lands of the tribe 'Ngaiterangi' described in the Schedule to this Proclamation, shall be a District within the provisions of the 'New Zealand Settlements Act, 1863,' and shall be designated by the name mentioned in such Schedule, and doth declare that the said Lands are required for the purposes of the said Act and are subject to the provisions thereof, and doth order that the said Lands shall be and the same are hereby set apart and reserved as sites for settlements and colonization agreeably to the Provisions of the said Act; And doth order, that in accordance with the promise made by His Excellency the Governor at Tauranga, on the sixth day of August, 1864, three-fourths in quantity of such lands shall be set apart for such persons of the tribe Ngaiterangi as shall be determined by the Governor, after due enquiry shall have been made.

The schedule described the Tauranga district as:

> All that land estimated to contain 214,000 acres, known as the Tauranga Block
>
> Bounded on the north-east by the sea from the mouth of the Wairaki Creek to Ngakuriawhare Point; on the south-west by a line bearing south 45° west (true) 16 miles; thence on a south-west line by a line bearing north 45° west (true) to the summit or water-shed of the dividing range of hills between the East Coast and the Thames Valley; and thence following

the said watershed northwards to the summit of the Aroha Mountain to Ngakuria-whare Point.

Together with the Island of Tahua [*sic*] or Mayor Island, and such portions of Motiti or Flat Island as shall be adjudged to belong to the Ngaiterangi Tribe, or to individual members thereof.[21]

This Order in Council had three features that, in combination, made it unique among the legislative instruments issued in the 1860s under the authority of the New Zealand Settlements Act for the purpose of confiscating land:

- The order was the first to declare a defined area to be a district under the Act and then immediately order the entire district to be set apart and reserved as sites for settlements and colonisation. By so doing, it purported to confiscate all of the land in the district without any apparent regard for that land's suitability or otherwise for settlement.[22] This technique was subsequently followed with confiscations elsewhere.
- The order differed from those which confiscated land in the Waikato and Taranaki in that it specifically mentioned the name of a tribe. All the lands of 'Ngaiterangi' described in the schedule were to become a district under the Act. In other words, all 'Ngaiterangi' lands in the district described in the schedule were confiscated, whether they belonged to rebels or to loyalists. And, since 'Ngaiterangi' lands were equated with the district described in the schedule, lands in the district that belonged to other tribes were also taken. At one fell swoop, the order extinguished all customary titles in the confiscation district, whether they belonged to Ngai Te Rangi or to any other iwi or hapu.[23]
- The order stated that the Governor would have the determining role in the return of land. It actually directed ('and doth order') that three-fourths of the land taken 'shall be set apart' for such persons of 'the tribe Ngaiterangi as shall be determined by the Governor, after due enquiry shall have been made'. In this, the order deviated fundamentally from the compensation process required by the New Zealand Settlements Act 1863,

21. 'Order in Council Proclaiming Certain Lands under The New Zealand Settlements Act 1863', 18 May 1865, *New Zealand Gazette*, 27 June 1865, no 22, p 187

22. Although there was no consistency in this matter, some earlier Orders in Council issued under the New Zealand Settlements Act 1863 did take a different approach to land confiscation. For example, on 30 January 1865, the Governor in Council proclaimed the district of middle Taranaki to be a district within the provisions of the Act. Then, in a separate proclamation of the same date, he set apart a number of areas 'within the district' as eligible sites for settlement, and declared those areas (not the entire district) to be required for the purposes of the Act: 'Order in Council Proclaiming Certain Lands under the New Zealand Settlements Act 1863', *New Zealand Gazette*, 31 January 1865, no 3, pp 15–16. Similarly, just two days before the Tauranga order of 18 May 1865, the Governor in Council issued two orders relating to central Waikato, the first one declaring the area a district under the 1863 Act and the second one defining sites for settlement within that district: 'Order in Council Proclaiming Certain Lands under the New Zealand Settlements Act 1863', *New Zealand Gazette*, 7 June 1865, no 19, p 169.

23. Justice Peter Blanchard ruled in 1996 in *Faulkner v Tauranga District Council* that the Order in Council and Tauranga District Lands Act 1867 had extinguished all customary title in Tauranga, not just Ngai Te Rangi's: see *Faulkner v Tauranga District Council* [1996] 1 NZLR 357–367.

which at that time – May 1865 – had not yet been amended to authorise Crown-arranged compensation in land. Therefore, in May 1865, the 1863 Act required the Compensation Court to determine the monetary compensation due to individuals for their loss of rights in confiscated land,[24] but the Order in Council instead directed that a fixed proportion of the confiscated district be returned to members of 'Ngaiterangi' by the Governor after some unspecified 'due process' had occurred.

The first two features of the 1865 Order in Council described above were clearly of concern to Francis Fenton, the chief judge of the Native Land Court, who had also been appointed senior judge of the Compensation Court. In that latter role, Fenton may also have protested about the third feature of the order: its apparent substitution of the Compensation Court's role in Tauranga with an unspecified process controlled by the Governor. But the objections that he made as a judge of the Native Land Court seem to have been based solely on the apparent conflict between the order's description of the confiscated district and the land court's exclusive jurisdiction to determine the customary ownership of native land. Fenton argued that, under the Native Lands Act 1862, it was the Native Land Court's role to determine the boundaries of the land of the 'tribe Ngaiterangi' before the area confiscated by the Order in Council could be known.[25] Clearly, Fenton did not accept the order's equation of 'Ngaiterangi' land with the area defined in the schedule. His view, as reported by Mackay in 1867, was that the order was 'defective from the uncertainty of the boundaries of the land taken'. Therefore, the Native Land Court could both investigate Maori claims to land within the 50,000-acre confiscated block eventually retained for military settlement and uphold those claims and award title to the original owners or their heirs.[26]

Fenton sought to bring the Native Land Court into operation in Tauranga after the Order in Council was gazetted, and he advertised a sitting of the court for 28 and 29 December 1865. Whitaker (by then the superintendent of the Auckland province and a general Government agent) intervened to stop the sitting on the ground that the confiscated land was now Crown land and the Native Land Court had no jurisdiction. Fenton protested to the Native Minister: 'I cannot imagine that the Crown can step in and demand the closing of a Court in any case in which the involvement of its own interests places it in a position of a quasi defendant.'[27] In January 1867, Fenton again raised the matter, arguing that without a court sitting it was not possible to determine whether or not the land to be investigated by the Native Land Court was part of the confiscated district. He added, 'no block of land has been confiscated in Tauranga but merely the land of a certain Tribe (ie, "Ngaiterangi") in a defined Territory. If the

24. In May 1865, when the Order in Council was issued, the New Zealand Settlements Act 1863 had not yet been amended to allow compensation in land. That happened some five months later (see sec 6.3.2).

25. Fenton to Native Minister, 22 January 1866 (RDB, vol 125, pp 47,905–47,907; doc A23, p 69

26. Mackay to under-secretary, Native Department, 31 July 1867, Tauranga confiscation file 1/1, DOSLI, Hamilton (RDB, vol 124, pp 47,565–47,566)

27. Fenton to Whitaker, 18 December 1865 (RDB, vol 125, pp 47,895–47,897) (doc A23, p 69)

Courts over which I have the honour to preside have no jurisdiction how will the question of which are the lands of this tribe be settled?'[28]

Fenton's appeal to the Native Minister was referred to the Attorney-General, James Prendergast, who wrote an opinion that Fenton claimed favoured his view. To some extent this seems to be true, since Prendergast advised that, once the Native Land Court received a claim, it must issue a notice of hearing and proceed to investigate the matter. But on the question of the court's jurisdiction in Tauranga once the Order in Council had been issued, Prendergast was not so favourable to Fenton's position. He said that, while the Native Land Court had jurisdiction over native lands as defined by the Native Lands Act 1862, it was clear that lands lying within districts declared under the New Zealand Settlements Act were no longer native lands.

Prendergast went on to make an important distinction. He advised that the New Zealand Settlements Act 1863 did not vest all the land in the Tauranga district in the Crown free from all claims but 'only such land within the district as is set apart for settlement'. Such land 'reserved for settlement . . . becomes Crown Land . . . [and] is not Native Land within the meaning of the [Native Lands] Act'. Prendergast noted that, once the Native Land Court had ascertained that the land in question met this description, it would have no jurisdiction and would have to dismiss the case. As for the other land within a district – land not set apart for settlement and so not vested in the Crown free from all claims – Prendergast said that it appeared that the New Zealand Settlements Act enabled that land to be 'given back to the Natives as abandoned by the Crown or disposed of in compensating those Natives who establish their claims without any grant'.[29] On Prendergast's analysis, then, although such land did not become Crown land, it could be used to compensate Maori for land that had been confiscated. We note that, in light of the 1863 Act's requirement that all compensation claims be transmitted to the Compensation Court to be determined by it (see s13), one interpretation of the Crown's powers to abandon land or to award it to Maori as compensation is that these powers did not arise until claims were made to, and heard by, the Compensation Court.[30]

28. Fenton to Native Minister, 22 January 1866 (RDB, vol 125, pp 47,905–47,907) (doc A23, p 69)

29. Prendergast to Native Minister, 16 January 1866, confiscation file 2/9, DOSLI, Hamilton Tauranga (RDB, vol 125, p 47,912). Prendergast stated this in relation to the Tauranga confiscation but it was not a position he always adhered to. For example, in 1867 he stated, in relation to the eastern Bay of Plenty confiscation, that the Order in Council of 1 September 1866, which had 'corrected' the boundaries, meant that all the land within the said boundaries was 'to be deemed Crown Land': see Prendergast to Colonial Secretary, 7 June 1867, IA1, 67/2771, ArchNZ (RDB, vol 123, p 47,443).

30. Contrary to this point, Mackay seems to have believed that the Crown was authorised by the New Zealand Settlements Act 1863 to abandon land whether or not the Compensation Court was involved. He reported that, in 1867, he had suggested to Tauranga Maori that one option for returning confiscated land would involve 'the whole' of the confiscated district outside of the confiscated block and Te Puna–Katikati being 'surrendered to them' under the New Zealand Settlements Act, whereupon it would revert to its 'original position' as regards title, be surveyed at their own expense, and be put through the Native Land Court, where the 'rebels still in the bush' could make claim to it. Mackay noted that this option was preferred 'almost unanimously': see Mackay to Rolleston, under-secretary, Native Department, 31 July 1867, Tauranga confiscation file 1/1, DOSLI, Hamilton (RDB, vol 124, pp 46,764–46,765).

While Fenton persisted in his efforts to bring the Native Land Court into operation in Tauranga, Mackay and Clarke began to arrange reserves in the confiscated block and in the Crown-purchased Te Puna–Katikati blocks.[31] In this, they were acting consistently with the Order in Council's statement that a 'due process' would be followed to enable the Governor to decide who of the tribe 'Ngaiterangi' would receive the three-quarters of the district that was to be given back. However, Fenton's criticisms of both the order's validity and the resistance shown by Government officials to the Native Land Court playing a role in Tauranga[32] seem to have been the catalyst for the Government's decision to legislate to put the validity of the order, and all that had been done in reliance on it, beyond doubt.[33]

6.3.4 The Tauranga District Lands Act 1867

When introducing the Tauranga District Lands Bill into the House, the Native Minister, James Richmond, admitted that 'some legal doubts had arisen' over the validity of the 1865 Order in Council, in that its terms were 'vague and uncertain'. He added that: 'As several large interests had arisen under that Order . . . it was necessary to ask the House to declare that it was valid.' In response to a speech by the member for Newton, George Graham, Richmond said that the Bill was intended 'to give effect to certain past transactions, or rather to remove any doubts in reference to them, and to prevent future litigation' (though he did not specify what the 'large interests' and 'past transactions' were that needed to be validated). Richmond also provided an explanation of why the Compensation Court had not operated in Tauranga: 'It was not because of the doubt as to the validity of the Order, but because no claims under it had been brought in. All the claims had been extinguished out of Court, up to the time for bringing in claims, and none had been sent in since.'[34]

Two months earlier, Fenton himself had reported to Richmond that he was aware of 'only one reason' why the Compensation Court had not sat in Tauranga, it being that 'no claims [had] been preferred to the Court by the Colonial Secretary, as required by the thirteenth section of "The New Zealand Settlements Act 1863"'.[35] From this, it would seem that both the Native Minister and the senior Compensation Court judge may have believed, contrary to our own conclusion, that the wording of the 1865 Order in Council did not rule out the

31. Mackay to Rolleston, under-secretary, Native Department, 31 July 1867 (RDB, vol 124, pp 47,557–47,558)

32. Mackay had reported on 31 July to the Native Department's under-secretary that Fenton 'made some strong comments on the conduct of the Officers of the Government obstructing the Native Land Court': see Mackay to under-secretary, 31 July 1867, Tauranga confiscation file 1/1, DOSLI, Hamilton (RDB, vol 124, p 47,567); doc A23, pp 70–71.

33. Fenton did get to determine the extent of 'Ngaiterangi' title on Motiti Island by holding a Native Land Court hearing. As we noted above, the schedule to the Order in Council included within the confiscated district 'such portions of Motiti or Flat Island as shall be adjudged to belong to the Ngaiterangi Tribe or to individual members thereof'. That was the only part of the Tauranga district described in the schedule admitted to possibly be not wholly within Ngai Te Rangi's territory. Fenton heard claims to the island and awarded roughly two-thirds of it to Ngai Te Rangi and the remainder to Ngati Patuwai, a Ngati Awa hapu: for further details, see sec 10.6.5; doc J1, pp 35–38.

34. Richmond, 'Tauranga Districts Lands Bill', 19 September 1867, NZPD, 1867, pp 978–979

35. 'Report by Mr Fenton Respecting Non-Sitting of Compensation Court, at Tauranga', AJHR, 1867, A-13

operation of the Compensation Court in the Tauranga district. However, whatever Richmond believed, his explanation of the Bill to his colleagues in the Lower House was certainly not clear.

Major John Richardson moved the second reading in the Legislative Council, explaining briefly that the Bill was needed to remove doubts over the validity of the Order in Council. He claimed that the Government had 'purchased the greater portion' of the confiscated block. The only intervention was a question from Walter Mantell asking 'if the land purchased . . . had been sold by the Natives of their own free will'. Richardson replied that he 'believed it had been sold freely without any sort of compulsion'. The Bill passed without further ado.

Although members of Parliament who relied on their colleagues' speeches may have been unsure of the Bill's genesis and scope, the preamble to the 1867 Act was quite explicit. It recited Grey's promise to return three-fourths of the land 'for such persons of the tribe Ngaiterangi as shall be determined by the Governor after due inquiry shall have been made', and said that such an inquiry had been made 'by officers thereunto appointed'.[36] This had resulted in 'various arrangements' being entered into 'with persons of the said tribe concerning portions of the said lands'. The preamble continued, saying that questions had arisen over the effect of the Order in Council and the validity of the arrangements that had been made. It was expedient that these arrangements should be implemented and that 'the interests of the Crown under the said Order in Council and of persons claiming under such arrangements should be confirmed'.

Accordingly, section 2 of the Act provided for a sweeping validation of 'All grants awards contracts or agreements of or concerning any of the land' described in the schedule to the Act and made, or purported to have been made, in accordance with the Order in Council or 'hereafter to be made or entered into by the Governor or by any person or persons authorized by the Governor'. None of these actions was to be 'called in question by reason of any uncertainty in the said Order in Council' or because of 'any omission or defect or departure of or from' the New Zealand Settlements Act 1863 and its amendments. The section then declared that the whole of the lands described in the schedule to the Order in Council or in the schedule to the 1867 Act was 'duly and effectually declared to be a District' under the 1863 Act, 'duly and effectually set apart reserved and taken' as sites for settlements, and 'duly and effectually declared to be required for the purposes of the said Act [ie, the 1863 Act]'. Section 3 provided that the words 'due inquiry' used in the Order in Council 'shall be deemed and taken to extend to inquiries made and carried through by persons thereunto appointed by the Governor'. Finally, section 4 stated that the lands described in the schedule to the 1867 Act were to be taken to be the lands defined by the Order in Council.

The effect of the Tauranga District Lands Act 1867 was, therefore, that any defects at all in the Order in Council's confiscation of the Tauranga district were validated, including

36. This must be a reference to Clarke and Mackay's roles.

its establishment of a land return process quite different in its nature and effect from the compensation process authorised by the New Zealand Settlements Act.[37] Also validated were any defects in the order's description of the boundaries of the Tauranga district. We have already noted that the confiscation boundaries were defined in the order along the lines of the boundaries pointed out by the 'Ngaiterangi' chiefs on board the *Sandfly* on its August 1864 expedition up-harbour. The schedule to the Tauranga District Lands Act 1867 described the confiscation district in identical terms to those of the 1865 Order in Council.

6.3.5 The Tauranga District Lands Act 1868

In September 1868, Richmond introduced a Bill to amend the Tauranga District Lands Act 1867, saying that the 'back boundary' of the confiscation district had been 'erroneously described' in the Order in Council.[38] Part of the 50,000-acre confiscated block had been found to be outside the confiscation district. More worrying, according to Richmond, was that 'Ngaiterangi' had been 'displeased at finding part of their territory outside the line of confiscation, and earnestly asked that it might be confiscated – that the arrangement of 1864 might be carried out in its integrity'. If it was not, 'Ngaiterangi' would consider that there was a 'conspiracy' to award the land to Te Arawa.[39] On the second reading of the Tauranga District Lands Act 1868, however, Richmond provided an additional reason for the need to extend the confiscation boundary. He stated that:

> Since the schedule was drawn, a partial survey of the district discovered the fact that it did not describe the district to which it referred. The boundaries were impossible, the lines would not meet, and the effect was that great confusion would be introduced into the affairs of the district unless an amendment was made. The only effect of the Bill was to replace an erroneous schedule by a correct one.

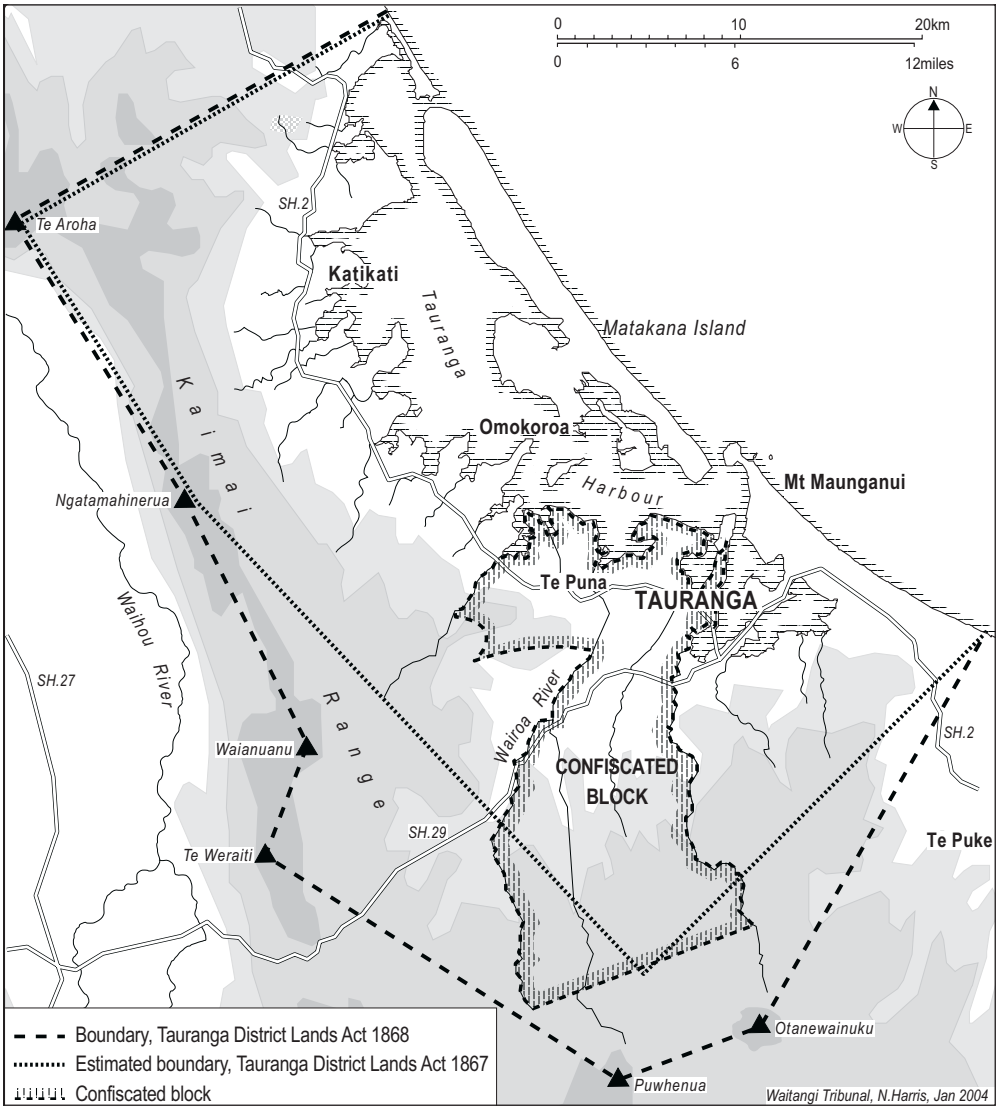
Richmond went on to state that his information on the matter had been supplied to him in 'the report of the Civil Commissioner, Mr Clarke, and of the Special Commissioner Mr Heale'. If these reports ever existed, we have not sighted them in the course of our inquiry. During the Bill's second reading, Richmond did quote from an alleged statement by Clarke that repeated his earlier assertion in Parliament that 'Ngaiterangi' were demanding that 'the Government confiscate the whole of the Ngaiterangi territory'.[40] Beyond the explanations given during the Bill's readings, we have not been presented with any further evidence on the

37. As will be seen in chapters 9 and 10, the role that Clarke and Mackay had already undertaken in Tauranga was continued after the Act was passed, with the gloss that they became known as land commissioners.

38. The long title of the Act was 'An Act to amend "The Tauranga District Lands Act 1867"'. We are unsure why the Government undertook the unusual step of amending the 1867 Act through a new Act and not an amendment.

39. 'Tauranga District Lands Bill', 17 September 1868, NZPD, 1868, pp 403–404

40. 'Tauranga District Lands Bill', 5 October 1868, NZPD, 1868, pp 148–149



Map 12: Confiscation district boundaries

circumstances surrounding the 1868 Act. The Bill passed in the House of Representatives on 6 October 1868 and the Legislative Council on 9 October.

The preamble to the Tauranga District Lands Act 1868 said that the Order in Council and the schedule to the 1867 Act did not include 'the whole of the lands of the Ngaiterangi Tribe intended to be taken by the said Order in Council'. The 1868 Act inserted a new schedule containing an amended description of the confiscation boundaries. These new borders took in an additional area of land on the south-western and south-eastern corners of the confiscation district and replacing various vague descriptions of degrees west or north by known geographic landmarks.[41] The newly included area was no small addition: it increased the size of

41. Document K25, pp 74–75

the confiscation district from an estimated 214,000 acres to some 290,000 acres. In map 12, the boundary included in the schedule of the 1868 Act is shown in relation to a rough approximation of the boundary in the schedule of the 1867 Act. However, we agree with Richmond's claim that the boundary lines of the south-eastern corner of the district, as described in the Tauranga District Lands Act 1867, do not appear to meet, and in our map we can only estimate where the drafters of that Act and the 1865 Order in Council intended that intersection to be placed. The effect of this extension was to enlarge the confiscation district further into the lands of Te Arawa hapu such as Ngati Rangiwehiwehi and Waitaha in the east of the district, and into the lands of Ngati Ranginui hapu at the head of the Wairoa Valley (see sec 2.4.2). With the exception of some of the eastern blocks where Nga Potiki and Ngati He shared interests with Waitaha, no land in which Ngai Te Rangi held strong customary interests was actually included within the boundaries' extension.

6.4 Findings of Fact on the Law

In its submissions to the Tribunal, the Crown argued that the taking of land by the May 1865 Order in Council was authorised by the New Zealand Settlements Act 1863, and therefore lawful, because the majority of Tauranga Maori were demonstrably in rebellion against the Crown.[42] We have dealt with the legal issue of rebellion in chapter 4, where we concluded that it is moot whether the situation at Tauranga in 1864 justified the application of the New Zealand Settlements Act at all. Even if it did, we have no doubt that the Order in Council's purported application of the Act was defective in very substantial ways. These, in turn, made the confiscation unlawful in very substantial ways – at least until the order was retrospectively validated in 1867.

Owing to the critical importance of the New Zealand Settlements Act's provisions and effect, earlier Tribunal reports have interpreted that Act's requirements in a strict manner. Most notably, it has been found that the Act envisaged a 'four-stage process' of confiscation.[43] The first step was the declaration of a district under section 2 of the Act, which could be made once the Governor in Council was satisfied that a tribe, or a section or considerable number thereof, had been engaged in rebellion against the Crown since 1 January 1863. Next, under section 3, it was necessary to set apart 'within any such District eligible sites for settlements for colonization'. Logically, this would have involved the activity required by sections 16 to 18 (as amended) ; namely, the laying out of town and farm allotments to be occupied by military settlers or to be sold. Thirdly, under section 4, it was necessary to 'reserve or take' any land within the district needed 'for the purposes of such settlements'. This was the land that was actually confiscated, as Prendergast agreed in 1866 (see sec 6.3.2). Lastly, under section 5,

42. Document 02, pp 53–54
43. Waitangi Tribunal, *The Taranaki Report*, pp 119, 127–129 ; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, p 65

it was necessary to compensate those found to be eligible by the Compensation Court. The claimants in this inquiry argued that this process was not followed by the 1865 Order in Council.[44]

We have considered the analyses of the 1863 Act contained in earlier Tribunal reports, and we agree that the subject-matter and specific provisions of the Act warrant the interpretation that the first three steps described above had to be followed in order to effect a valid confiscation under the Act. Those steps were not followed by the 1865 Order in Council. Instead, the land that was said to be taken was an entire district, and we conclude that the confiscation was unlawful for that, very substantial, reason.

The claimants also contended that the Order in Council was defective for purporting to authorise a Governor-approved process for returning a fixed amount of land, because any such unspecified process would not involve the investigation of the Compensation Court or Native Land Court. In the claimants' view, the New Zealand Settlements Act required that a judicial process establish where the land of alleged rebels was located and to whom compensation was due.[45] In response, Crown counsel claimed that section 18 of the New Zealand Settlements Act was intended to be used in returning confiscated land to Maori.[46] From this, it appears that the Crown was arguing that the failure to use the Compensation Court at Tauranga was not outside the provisions of the Act. This would account for the Crown's claim (see below) that the 1867 validating legislation was not aimed at legalising the conduct of Government officials in returning land to Tauranga Maori.

Lastly, the claimants contended that the Order in Council was defective in that it 'did not specifically deem the land to be *taken*' (emphasis added). This is a reference to the exact wording used in the Order in Council, which was that the lands described in its schedule were 'set apart and reserved' as sites for settlement and colonisation. Section 4 of the New Zealand Settlements Act 1863, however, provided that, for the purposes of settlements, the Governor could 'reserve or take' any land within a district.[47]

Though we agree with some of the claimants' submissions on the validity of the 1865 Order in Council, we also believe that they overlooked some salient points. In particular, as we have noted, the order's direction to return three-fourths of 'Ngaiterangi's' land was inconsistent with the New Zealand Settlements Act because such a return could not be achieved by the Compensation Court process that was established by the Act and that was, in May 1865, the only process authorised by the Act. And, despite Richmond's and Fenton's apparently contrary belief (see sec 6.3.3), it also seems clear that the Governor in Council intentionally excluded the Compensation Court process in Tauranga, because the land return process and outcome provided for by the Order in Council were completely at odds with the court's

44. Document N11, pp 96–97; doc N12, p 22; doc N13, pp 13–16

45. Document N11, p 103; doc P5, p 10

46. The section provided for the disposal of confiscated land not intended for military settlement by whatever means and on whatever terms the Governor in Council prescribed.

47. Document N11, p 105

process. The result was that, while the order invoked the power granted by the Act to confiscate land, it then departed in a substantial way from the Act's companion requirements defining the judicial process required to compensate 'non-rebels' by directing that a fixed proportion of land be returned by a quite different process.

Our view means that we reject the Crown's argument that section 18 of the New Zealand Settlements Act 1863 authorised a compensation process other than that of the Compensation Court. We are satisfied that it did nothing of the sort but instead gave the Governor power to dispose of land surplus to the requirements of military settlement. Section 18 did not allow the Governor to dispose of claims to compensation without recourse to the Compensation Court. Our view is supported by the wording of the Tauranga District Lands Act 1867 and the speeches given in Parliament during its readings (see sec 6.3.4), which make it clear that the Act was meant, at least in part, to retrospectively legalise 'the arrangements' made to return land to 'Ngaiterangi'.

The result of our consideration of the legal framework for the Tauranga Moana confiscation is that, to the extent that the 1865 Order in Council was inconsistent with the New Zealand Settlements Act 1863, it was invalid. The order departed from the Act substantially in two regards: by purporting to confiscate the entire district it described, not merely areas within it that were suitable for settlement, and by substituting its own land return process for the compensation process established under the Act. Therefore, we believe that there is a strong argument that the order was wholly invalid. If so, the order's purported confiscation of the Tauranga district had no legal basis or effect. In the circumstances, the later retrospective validation of all the mismatches between the 1863 Act (as amended), the Order in Council, and the behaviour of Crown agents concerning the land in the Tauranga confiscation district was no mere correction of 'technical' legal defects. Instead, it was a 'technical' correction of substantial legal defects and, as such, is wide open to criticism for being unjust to those whom it adversely affected. We acknowledge that the precise legal position concerning the validity of the Order in Council may not have been clear to many of those who were involved at the time with its drafting and implementation. However, since the New Zealand Settlements Act dealt with matters of such critical importance as the taking of Maori land, both with and without compensation, it would have been apparent to all involved that any failings in the Act's policy or its implementation could have very serious consequences for Maori. In those circumstances, the Crown's use of the device of retrospective validation to 'cure' all possible legal defects in its confiscation of Tauranga Moana land and its subsequent compensation arrangements provides scant assurance that its Treaty obligations to Tauranga Maori will have been fulfilled. However, we reserve this matter for later in the chapter, when we shall discuss the application of the principles of the Treaty of Waitangi to the confiscation of the Tauranga Moana district. Here, it is necessary only to dispose expressly of one final point, a point that was raised by some claimants and the Crown and that concerns the reason for the enactment of the Tauranga District Lands Act 1867.

We noted earlier that some claimants had identified the absence of any reference in the Order in Council to actually 'taking' the land that it described as a defect. In response, the Crown argued that this omission was the only possible legal defect in the order and that the 1867 Act was passed to overcome any doubt caused by its wording in that respect.[48] For the reasons we have already given, we firmly reject the Crown's argument on this point. We consider any such issue of terminology to be wholly incidental to the major issues we have already canvassed with respect to the original unlawfulness and later retrospective validation of the Order in Council.

We do not consider that the Tauranga District Lands Act 1868 raises any significant questions of law. We therefore leave our discussion of it until we make our findings in relation to the application of Treaty principles.

6.5 Claimant and Crown Submissions

In this section, we examine the confiscation at Tauranga in light of the Treaty principles outlined in chapter 1. In order to do this, we first briefly summarise the positions of the claimants and Crown on the matter.

6.5.1 Claimant submissions

In chapter 4, we outlined the claimants' argument that Tauranga Maori were not in rebellion, and that their defence of Pukehinahina and Te Ranga did not justify the suspension of their article 2 guarantees and the confiscation of their land. Counsel then discussed the application of the New Zealand Settlements Act 1863 to Tauranga, saying that:

> Even if circumstances *did* exist so as to justify the confiscation of land in Tauranga Moana, (which is denied) it is nonetheless submitted that the process adopted by the Crown was itself in breach of the principles of the Treaty. One aspect of this was that the Crown even failed to comply with the provisions of the Settlements Act as the mechanism by which the Crown authorised itself to take land. [Emphasis in original.][49]

We have already traversed claimant counsel's arguments that the Tauranga raupatu did not comply with the provisions of the Act, and so we say no more here on this point.

Another allegation of Treaty breach was that the taking of land without consent impinged on 'the guarantee given in Article 11 of the Treaty that Maori could remain in possession of their land as long as they wished'. The claimants argued that there were 'no legitimate

48. Document 02, pp 54–55
49. Document N11, p 102

grounds for suspending that guarantee'.[50] Some claimant counsel took issue with the 'indiscriminate' nature of the confiscation at Tauranga – the confiscation of the whole district impacted on 'loyal' and 'rebel' Maori alike, and this, it was said, was a breach of the Crown's Treaty responsibility actively to protect the interests of Maori not involved in the 'rebellion'.[51] The Crown's contention that the confiscation of the whole district was necessary so that inequities created by the retention of the 50,000-acre block could be remedied was rejected by the claimants on the grounds that through this process some Tauranga Maori were unfairly treated and all suffered from the individualisation of their tenure.[52]

Another alleged Treaty breach was the Crown's failure to allow the Native Land Court to determine title to Tauranga Moana lands and its denial to Tauranga Maori of any judicial recourse for their concerns.[53] This, it was said, was inconsistent with the Crown's obligation to act in good faith and to uphold Maori rights under article 3 of the Treaty. Some counsel also asserted that using the device of retrospective validation in respect of an unlawful confiscation had 'merely served to compound the Treaty wrong'.[54]

Without admitting any role for 'Ngaiterangi' in procuring the amendment to the boundary of the district, the joint submission stated in respect of the Tauranga District Lands Act 1868 that its 'naked object' was 'an enlargement of the Crown's confiscation in Tauranga'.[55] Counsel for Ngai Te Rangi said that the Crown, by virtue of the Act, 'unilaterally extended the confiscation area without the consent of or even the pretence of consultation with the Tauranga iwi'.[56] The extension of the confiscated district to some 290,000 acres was described as 'a further breach of Governor Grey's promise and of the principles of the Treaty'.[57]

Counsel for Waitaha also objected to the extension of the boundary, though for different reasons. She said that the extension was made at the expense of Waitaha, not Ngai Te Rangi. Counsel had found no evidence that Waitaha were consulted, but the confiscation extinguished their customary interests and they did not get all of the land back when reserves were awarded. Counsel argued further that the extension was 'completely without justification', that it did not meet the requirements of the New Zealand Settlements Act (in that the land was not needed for settlement), and that the Crown was therefore in breach of its article 2 obligations.[58]

50. Document N23, p 36; doc N11, p 100
51. Document N11, pp 102–103; doc N12, p 20; doc N23, pp 34–35
52. Document P8, p 34–36; doc P6, pp 8–9
53. Document N11, p 110
54. Document N23, p 36; doc N7, p 27
55. Document N11, p 111
56. Document N20, p 37
57. Ibid, p 38
58. Document N22, pp 10–11

6.5.2 Crown submissions

In their closing submissions, Crown counsel took both the claimants and previous Tribunals to task for what had been said about the New Zealand Settlements Act 1863. In the Crown's opinion, the Act had three underlying objectives: the 'punishment and deterrence of rebellion'; the 'establishment of military settlements . . . to protect the colony from the use of illegal force'; and the 'funding of the Government's war effort' through sales of surplus land. Crown counsel stated that taking land was the orthodox response to rebellion in the mid-nineteenth century and that the disposal of surplus land was also orthodox. Counsel also argued that, in practice, it was impossible to take only the land of 'rebels', and so the New Zealand Settlements Act adopted a 'public works' approach towards compensating 'non-rebels' for any land losses.[59]

In respect of the situation in Tauranga, the Crown submitted that the most important point was that 'the Order in Council of May 1865 was plainly not intended to, and in fact did not, impose any punishment on Tauranga Maori that had not previously been the subject of the agreement at the Pacification hui'. Crown counsel stated that the claimants' assertion (in the joint submission) that the Order in Council 'confiscated all of Tauranga Moana' was 'far too simplistic'.[60] The Crown considered that it was necessary to make the whole of Tauranga Moana a confiscation district so that titles within the affected area could be adjusted to allow the Crown to remedy any 'obvious inequity' created by the taking of the confiscated block. Extinguishing customary title over the whole district allowed the Crown to grant back land according to Grey's promises.

The Crown rejected the position expressed in the claimants' joint submission that the Tauranga District Lands Act 1868 'unilaterally extended' the confiscation district. The Crown pointed to evidence that the boundary was extended at Ngai Te Rangi's request in an effort to protect their boundaries.[61]

6.6 Treaty Findings

We follow Edward Cardwell, the Secretary of State for the Colonies, in regarding the New Zealand Settlements Act 1863 as a 'standing qualification of the Treaty of Waitangi'. The Crown argued before us that previous Tribunal inquiries have overlooked the main features of the Act: namely, the orthodox nature of confiscation; the need to deter rebellion; the establishment of military settlements; and the funding of the cost of war through the sale of surplus confiscated land. However, these points are of secondary importance to the situation in New Zealand in the 1860s. The Crown had previously entered into a Treaty relationship

59. Document 02, pp 21–25
60. Ibid, pp 53–54
61. Ibid, p 55

with the very people from whom it was proposing to confiscate land. For any confiscation by the Crown to be valid in Treaty terms, it would have had to be preceded by a gross breach by Maori of the principles of the Treaty, leading to a complete breakdown of the Treaty relationship. As we have made clear in chapter 4, no such breakdown occurred that can be ascribed to the actions of Tauranga Maori. It clearly concerned both Cardwell and Martin, each a leading figure of the time, that the Treaty was being ignored by the Government while it pursued its confiscation policy. Whether this policy was orthodox by the standards of English law or custom in the nineteenth century is of limited relevance to the task of this Tribunal – the Crown had a standard, expressed in the Treaty, over and above the considerations of law or orthodoxy, by which to measure its conduct so far as it affected Maori. It applied the New Zealand Settlements Act to Tauranga without paying sufficient attention to its Treaty relationship with Maori.

As we have said in chapter 4, we do not regard the question of whether Tauranga Maori were in rebellion to be of vital importance in terms of evaluating whether the Crown breached the Treaty. Technically, a proportion of Tauranga and Waikato Maori may have been in rebellion according to a strict, Anglocentric view of the law. We agree, however, with the Crown's position as expressed in the Waikato Raupatu Claims Settlements Act 1995 : namely, that it was unfair to label those Maori as rebels. It was unfair, not only because it relied on the strictest possible interpretation of English law without reference to the local conditions of New Zealand but also because the label made 'rebels' liable to suffer confiscation under the New Zealand Settlements Act. This was despite the fact that article 2 of the Treaty promised Maori full, exclusive, and undisturbed possession of their land. In Treaty terms, the confiscation of any land at Tauranga was not justified. We therefore find that the confiscation of the lands in the district of Tauranga, as described in the schedule to the Order in Council of 18 May 1865, was in breach of Maori article 2 rights that allowed them to retain their land (and other possessions or taonga) for so long as they wished. We consider this to be so self-evident that little further explanation is necessary. The Crown clearly ignored its Treaty obligations to act in partnership with, and actively to protect the rangatiratanga of, Tauranga Maori.

Not only was the decision to confiscate land at Tauranga in breach of fundamental Treaty principles, but the way in which the confiscation was applied was also in breach of those principles. We have already explained at section 6.4 why we consider the application of the New Zealand Settlements Act at Tauranga, by the mechanism of the 1865 Order in Council, was unlawful, at least until it was retrospectively validated by the Tauranga District Lands Act 1867. For the Crown to act unlawfully is obviously not good governance. All the more so when the unlawfulness consisted of Crown officers acting without any statutory power and in place of a judicial process that would have determined the existence and extent of fundamentally important Maori rights.

In our view, the situation at Tauranga made it wholly inappropriate for the Government to seek to apply the 1863 Act there. The essential policy of the Act was that claims by non-rebels

to confiscated land would be investigated and, if proven, the claimants would be compensated by means of a judicial process. What the Crown sought to achieve at Tauranga was quite different, particularly because of Grey's promise to retain a fixed proportion of the land taken and give back the remainder. It may be thought that, legally, the Government should have drafted separate legislation in order to achieve its intentions for Tauranga. It is our view, however, that the imperial authorities' objections to the 1863 Act make it extremely unlikely that they would have approved a law that confiscated the entire Tauranga district, retained one-quarter of it, and then adjusted the rights of all the previous Maori owners through a non-judicial process. We consider that a deed of cession, taking only the land that the Crown intended to retain, would have been the surest means of achieving lawfully what the Crown intended for Tauranga. But if negotiating such a cession proved impossible, compliance with the New Zealand Settlements Act – if not the Government's exact intentions – could only have been achieved by establishing the Compensation Court's jurisdiction in Tauranga.

We cannot know if Tauranga Maori would have suffered less prejudice if the New Zealand Settlements Act had been lawfully applied and the Compensation Court had sat at Tauranga. For our present purposes, however, it is not material to seek to compare the outcome of what was done unlawfully in Tauranga with the outcome of what might have been done lawfully. In terms of the Treaty principle of reciprocity and the Crown's corresponding kawanatanga duties, the Government was obliged to ensure that its actions conformed with the provisions of the New Zealand Settlements Act and to provide Maori with access to the judicial process the Act established. By the manner in which the Crown applied the Act to Tauranga, it failed in its obligations. We conclude that the Crown was in breach of its Treaty obligations to provide good governance and actively to protect Maori rangatiratanga over their lands.

By making this conclusion, we reject the Crown's argument that the taking of land at Tauranga was in accordance with what had been agreed at the pacification hui and was therefore akin to a cession and not a confiscation. We acknowledge that, after the battles at Tauranga, Maori were prepared to forfeit some land in exchange for peace. However, Tauranga Maori and the Crown could not agree on the size or location of the land to be taken. Indeed, they had different understandings of the extent of the land that Grey had promised to return (see sec 5.2.6). In the end, the Crown simply took what it asserted Grey had told Tauranga Maori he would take at the pacification hui, and it used the New Zealand Settlements Act to effect this. In this respect, the Tauranga raupatu was no different from those in the Waikato, in Taranaki, or in the eastern Bay of Plenty – it took place without the consent of those it affected.

Lastly, we make a finding on the related issue of the Tauranga District Lands Act 1868, which extended the boundary of the confiscation district. Counsel for Waitaha alleged that the boundary extension, brought into effect by the Act, arose because the Crown facilitated 'Ngaiterangi's' request that it be extended. In contrast, counsel for Ngai Te Rangi submitted that the 1868 Act 'unilaterally extended the confiscation area without the consent of . . . Tauranga iwi' and that the Crown failed adequately to inquire into the extent of Ngai Te

Rangi's interests in the Tauranga district.[62] Though the contention that some Ngai Te Rangi leaders requested the extension of the boundary seems plausible, we have insufficient evidence to come to a conclusion on this matter. For the same reason, we make no definitive conclusion on the allegation that the extension of the boundary was done without the consent of Tauranga iwi. The speeches given by Richmond and his allies in Parliament constituted the only evidence presented to us on the matter, and we have no way of corroborating the assertions they made. While we are not implying that Richmond was necessarily dishonest, he appeared at times to be either economical with the truth on matters relating to Tauranga or simply misinformed – as we found in our discussion of his speeches in Parliament concerning the Tauranga District Lands Act 1867.

While we have insufficient evidence on the motivations of the Government in enacting the Tauranga District Lands Act 1868, the practical effects of it are clear. Richmond asserted that the description of the boundary in the Tauranga District Lands Act 1867 meant that some lots surveyed for the intended occupation of military settlers were outside the confiscation district as it was described in the Act's schedule. Later, he also claimed that the boundary, which was in the same schedule, was defective because its southern and eastern legs failed to intersect. We have examined the schedule of the Act and the locations of the military settlers' lots and consider both of these explanations to be well-founded. However, it does not follow that the confiscation district needed to be expanded by over 70,000 acres – the defects could have been remedied without expanding the district at all. We have found above that there was no justification for confiscating any Tauranga land; neither could there be any justification for extending the confiscated area. The result of this extension was that much of Waitaha's rohe and the land of several other hapu was included in the confiscation district without their consent. We agree with the submissions on behalf of Waitaha, outlined above (see sec 6.5.1), that the Crown ignored their rights in extending the confiscation boundary and was thereby in breach of the Treaty. This was a breach of the Crown's Treaty obligation to protect Waitaha's rangatiratanga over their land.

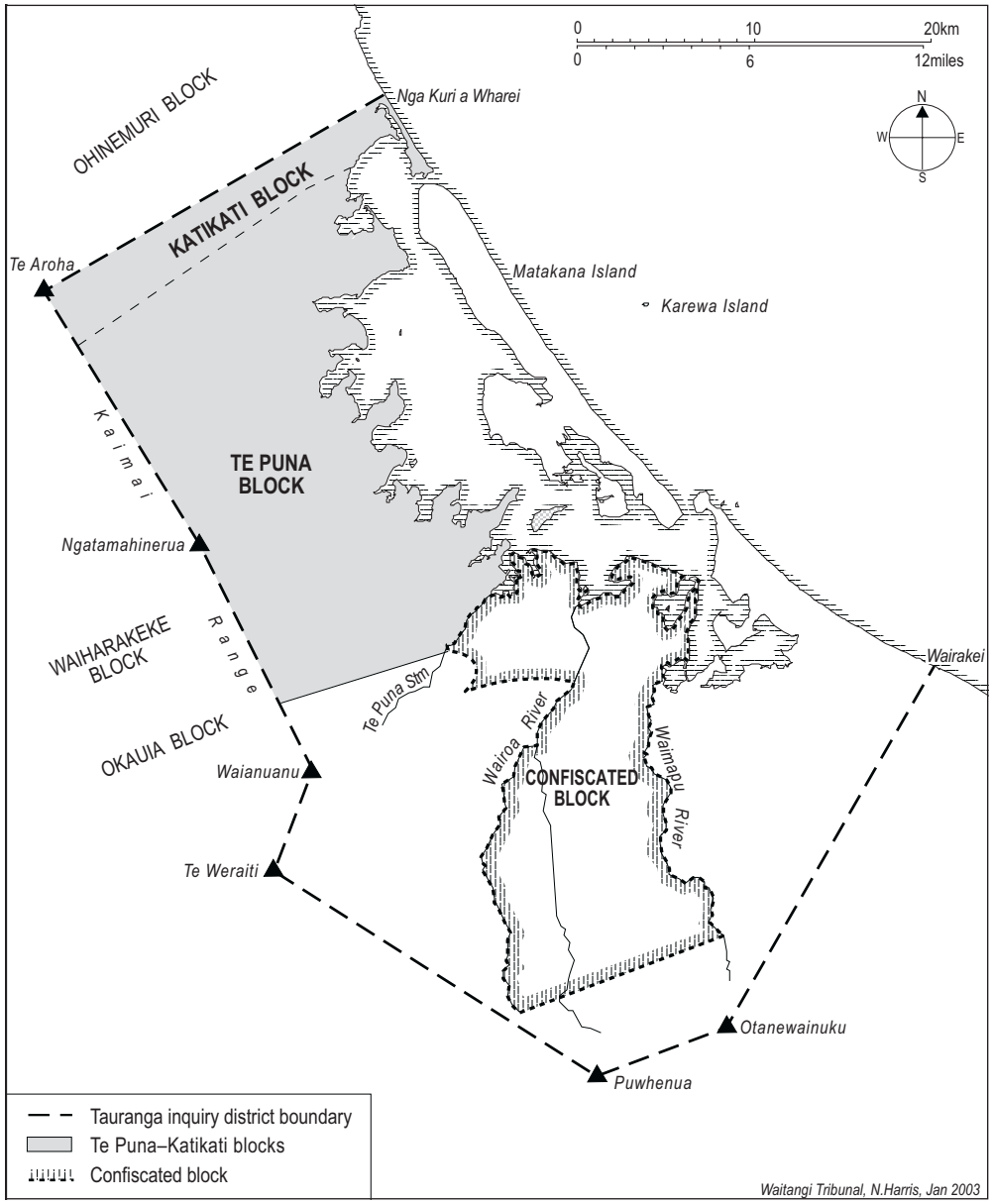
The extent to which the different Tauranga Moana hapu suffered prejudice as a result of these Treaty breaches is the subject of later chapters. At this stage, we merely note the Crown's contention that Tauranga Maori did not suffer excessively from the raupatu of some of their lands. In many ways, this is not a new argument. Ever since the raupatu, the Crown has maintained that Tauranga Maori were treated more generously than Maori in Taranaki and the Waikato. Because of this, it refused to compensate them, at least until 1981 (see sec 1.2.1). As a result of our analysis to this point, we consider that during the wars Tauranga Maori were in a comparable situation to that of Taranaki and Waikato Maori. Therefore, in so far as confiscation arose from those wars, we consider that the raupatu grievances of Tauranga Maori should be assessed in terms consistent with those by which the Crown has assessed the raupatu grievances of Taranaki and Waikato Maori.

62. Document N20, p 37

6.7 Chapter Summary

The main points in this chapter are as follows:

- The Tauranga district was confiscated by an Order in Council of May 1865 which purported to bring it under the provisions of the New Zealand Settlements Act 1863. However, the Order in Council did not conform to the provisions of the Act in two substantial ways: it set aside the whole district as a site for settlement when clearly the whole district was neither needed nor suitable for settlement and it circumvented the compensatory mechanisms of the Act by declaring that a set proportion of the district would be returned by the Governor. A further problem was that the Order in Council declared the whole district to be the land of 'Ngaiterangi', yet the Government did not allow the real extent of Ngai Te Rangi title to be ascertained. These problematic features of the Order in Council were retrospectively validated in the Tauranga District Lands Act 1867 and put beyond legal challenge.
- The confiscation district was extended by an estimated 75,000 acres by the enactment of the Tauranga District Lands Act 1868. Much of this land was within Waitaha's rohe.
- The Crown was in breach of the principles of the Treaty both by taking land at Tauranga without Maori consent and by by denying Maori the due process of the law in regard to this taking. The Crown's first breach was clearly its failure to protect the rangatiratanga of Tauranga Maori, while its second breach was its failure to fulfil its obligation to provide good governance. The Crown further breached the Treaty by extending the confiscation district in 1868 and taking more land from Maori without their free and willing consent.



Map 13: Te Puna–Katikati purchase boundaries

CHAPTER 7

THE TE PUNA–KATIKATI PURCHASE

7.1 Introduction

This chapter deals in detail with the Crown's purchase of the Te Puna–Katikati blocks. The blocks' boundaries adjoin the confiscated block at the Te Puna Stream and run along the fringe of Tauranga Harbour as far as the north-western corner of the confiscation district at Nga Kuri a Wharei. The blocks were originally estimated to contain 90,000 acres, although a more recent estimate puts the area at 93,188 acres.[1] As we noted in chapter 2, a number of hapu claimed customary interests in this area, including those of Ngai Te Rangi, Ngati Ranginui, Marutuahu, Ngati Haua, and Ngati Pukenga (see sec 2.5.2).

The Crown's purchase of the Te Puna–Katikati blocks was intimately related to the Tauranga raupatu and can be properly understood only in that context. Nevertheless, we have decided to deal just with the purchase in this chapter in order to focus more clearly on the specific issues involved and the claims relating to them. As we noted in chapter 5, the purchase was initiated by Whitaker and Fox in the aftermath of the pacification hui. The Ministers were already embroiled in a row with Grey over the extent of the Tauranga confiscation, and this intensified after the hui, where Grey announced his plan to keep one-quarter of 'Ngaiterangi's' land and return the rest. Grey was hoping to obtain the quarter by cession, according to Cardwell's instructions, rather than confiscation. The Ministers preferred outright confiscation, and by purchasing the Te Puna–Katikati blocks they hoped to frustrate Grey's promise to return three-quarters of the district. As a result of the purchase, the Crown would obtain a total of some 140,000 acres (at least 90,000 acres from Te Puna–Katikati, plus 50,000 acres from the confiscated block at Te Papa); this was almost two-thirds of the proposed confiscation district of some 214,000 acres.

The Whitaker–Fox purchase did not go smoothly. Although an initial agreement was reached with some of the loyal Ngai Te Rangi chiefs in August 1864 and a downpayment made, the purchase was not completed for another seven years. A number of factors contributed to the delay. First, the Government had to deal with the claims of several non-Ngai Te Rangi groups, including the powerful Marutuahu federation of Hauraki, which had a

1. Document A13, p 53. Compare with Stokes, whose calculations suggest the total area purchased to be over 100,000 acres: doc A57, p 286.

long-standing claim to the western part of Te Puna–Katikati, and several Ngati Ranginui hapu, such as Pirirakau. We discuss the Government's handling of those objections in this chapter, though attempts to deal with the claims of Pirirakau were delayed by the bush campaign of 1867, in which most of the hapu were involved. We discuss that in chapter 9. A second complicating factor was the need to set aside reserves in the Te Puna–Katikati blocks, some of which Government officials claimed were required to compensate loyal Ngai Te Rangi for their losses in the 50,000-acre confiscated block. We discuss some of the problems involved in this chapter, leaving the actual awarding of reserves to be described in chapter 10.

7.2 The Initial Te Puna–Katikati Transaction

We are uncertain when the purchase of the Te Puna–Katikati blocks was first broached with Ngai Te Rangi chiefs. What is clear is that, once Grey had promised to return three-quarters of the district to 'Ngaiterangi', the way was open for various interested parties to begin negotiations to purchase land in the district under the Native Lands Act 1862. The planned military settlement on confiscated land at Tauranga also encouraged dealing in land later to be reserved or awarded to 'Ngaiterangi', as we noted in our previous chapter (see sec 6.2).

The Crown's purchase of Te Puna–Katikati could have been initiated as early as the pacification hui of 5 and 6 August 1864. In September 1865, Mackay claimed that when Tauranga Maori agreed to give up one-fourth of their land they also agreed to sell Te Puna–Katikati to the Government for two shillings an acre.[2] In May 1867, Clarke (by then the Tauranga civil commissioner) also said that the 'Natives' had agreed to sell the lands north of Te Puna during Grey's visit in August 1864,[3] implying that the matter was raised and agreed during the hui, and before Grey left for Auckland on 7 August. But we have seen no other confirmation of this and think it more likely that the purchase was raised by Whitaker and Fox during or just after their boat trip up the harbour on 8 August. On that journey, the Ministers were accompanied by Greer, Clarke, Rice, and 'some fifteen or twenty natives'.[4] We described this trip in chapter 5 and noted that according to newspaper reports it was mainly concerned with pointing out the boundaries of the land belonging to 'Ngaiterangi' and locating places where Ngai Te Rangi could be settled (see sec 5.2.5). But there was also talk, according to the *New Zealander*, of land required for the military settlers and European settlement generally.[5] The *Daily Southern Cross* reported that Tauranga Maori aboard the *Sandfly* were pleased to hear that a military settlement would be made at Te Puna because this would provide protection for them from their old enemies – Taraia and other Hauraki Maori.[6] Mackay and Clarke later

2. Mackay to Fitzgerald, 16 September 1865, AJHR, 1867, A-20, p 16
3. Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p 62
4. *New Zealander*, 17 August 1864
5. Ibid
6. *Daily Southern Cross*, 17 August 1864

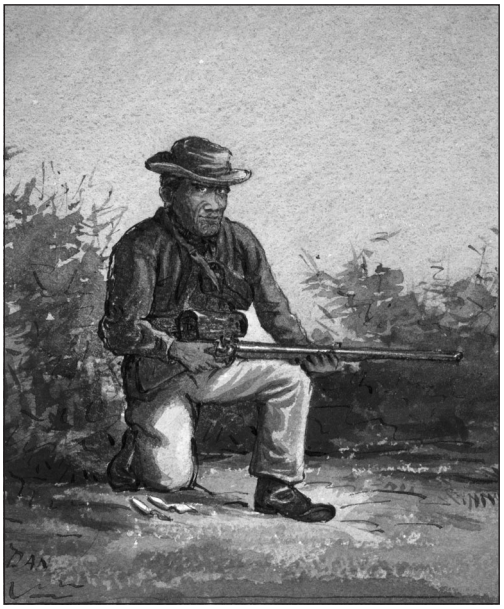


Fig 9: *Raniera Te Hiahia – Guide to the Tauranga Field Force, 1864*. Watercolour by Horatio Robley. Reproduced courtesy of the Alexander Turnbull Library (E-023–008).

stated in official reports that Ngai Te Rangi were happy for the Government to acquire Te Puna–Katikati for this reason.[7]

Whitaker and Fox remained in Tauranga for about a week before leaving for Auckland on the *Sandfly* with 18 loyalist Ngai Te Rangi chiefs, some of whom had probably been on the boat trip up the harbour. According to a newspaper report, those who went to Auckland were: Hohepa Hikutaia, Hohaia, Tamati Manuao, Mere, Tawaewae Paerata, Wiremu Parera, Wiremu Patene, Pikaka, Maihi Pohepohe, Ranapia, Mere Taka, Raniera Te Hiahia, Rini Te Matekapua, Tomika Te Mutu, Te Patu, Hamiora Tu, Turere, and Arama Karaka Whati.[8] It is likely that by then the chiefs had indicated a willingness to sell and that this was one of the reasons for the trip.

En route to Auckland, Grey boarded the *Sandfly* from his island retreat at Kawau. There was some newspaper speculation about meetings in Auckland but no official record of any exists, apart from an account written by Heale on 27 June 1865, some 10 months after the events. The *New Zealand Herald* speculated that the Tauranga chiefs wanted to sell to the Government the three-quarters of the district that Grey had promised to return to them.[9] According to Heale, the chiefs went to Auckland to 'arrange more fully' the 'carrying out' of Grey's peace terms. On 18 August, 'further promises' were made by Fox and Whitaker; they assured the chiefs that surveyors and settlers would be sent to Tauranga and that Tauranga Maori would be issued Crown grants and be employed building roads.

7. Document M10, pp 60–61

8. *Daily Southern Cross*, 22 August 1864, p 4; according to the *New Zealander*, 16 August 1864, p 3, only 14 travelled with Grey. Six of the eight named chiefs who had met Grey on 14 May were among those listed by the *Daily Southern Cross*: see doc A23, fn 126, p 29.

9. Document M9, p 142

Heale added:

> And as it was found that any block of land which the Government might take by way of confiscation would be embarrassed by claims to particular pieces, preferred by loyal members of the tribe, a purchase was made from these to include all lands belonging to the sellers, which the Government might take at three shillings per acre, and £1,000 was paid on account of this purchase, a sum which, at the price named, is likely to cover any claims they have on the block required by the Government . . . for the settlement of the 1st Waikato Regiment.[10]

This suggests that the preliminary agreement to purchase Te Puna–Katikati was made in Auckland on 18 August, although the deposit of £1000 that was paid to nine of the chiefs was dated 26 August. The receipt was witnessed by two interpreters, E W Puckey and James Fulloon. Those who signed were Hohepa Hikutaia, Wiremu Parera, Wiremu Patene, Tomika Te Mutu, Te Patu, Turere, Pikake, Hamiora Tu, and Raniera Te Hiahia. The receipt said that the money was to 'rest upon one piece of land at Tauranga', and it described the boundaries of that land as commencing at 'Ngahuria Whare to the north of Katikati' then 'following round the outside boundary line of all the Ngaiterangi claims' before joining a boundary running south from Te Puna.[11] Five of the nine chiefs who signed the receipt got a bonus: they shared with three others a £100 annual pension that was paid to loyalist Tauranga chiefs by the Government (see sec 5.2.5).

Another record of the initial Te Puna–Katikati transaction was published in the 1867 *Appendix to the Journal of the House of Representatives* as 'A List of Natives and Hapus Who Received the £1,000 from Mr Henry Clarke'. Although this undated record lists nine signatories (as did the original receipt), it names Enoka Te Whanake, Tamati Mawao, and a second man named Turere in place of Patene, Te Patu, and Pikake. It also gave the names of the hapu that the signatories belonged to and the amount that was paid to each one – Enoka received £272 of the £1000 and all the rest got £91 each.[12] Since the second list included Enoka, one of the leading Ngai Te Rangi chiefs who had surrendered to Greer and Grey, it appears to have been an afterthought, probably designed to show wider Ngai Te Rangi support for the purchase. Although he apparently received a higher payment than the other chiefs, Enoka was subsequently critical of the initial transaction. In 1866, he told the Minister of Colonial Defence, Colonel Haultain:

> If the matter of the one thousand pounds (£1000) had been done by all the tribe, well – but it was the work of the men who went to Auckland. I knew nothing of the arrangement to

10. Theophilus Heale, 'Memorandum on Tauranga Affairs', 27 June 1865, AJHR, 1867, A-20, p 14
11. Untitled, no 4, 26 August 1864, AJHR, 1867, A-20, p 6
12. 'Te Puna Block: List of Natives and Hapus Who Received the £1,000 from Mr Henry Clarke', no 3, AJHR, 1867, A-20, p 6

> sell land at Katikati. Can you tell me where the boundaries are? Some of the people who lived peacefully on the land would object to being involved in that manner.[13]

Because the provenance of the second receipt is uncertain, some signatories of the are different, it is undated, and it was not witnessed, its validity is questionable.

7.3 Additional Claims to Te Puna–Katikati

7.3.1 The claims

It did not take long for the implications of the preliminary sale agreement to be recognised by other Maori with land interests in the Te Puna–Katikati area, and they quickly challenged the right of a small number of Ngai Te Rangi chiefs to sell the land. In the next few months, Grey and his Ministers and officials received a number of appeals against the sale from Te Arawa, Marutuahu, surrendered Ngai Te Rangi, and Ngati Ranginui.[14] One protest came from Te Kou o Rehua of Ngati Pukenga, who wrote to Governor Grey asking him to:

> release my land at Tauranga, because I am a man without offence. If I had gone to fight at Tauranga and Waikato it would have been right to punish me, that is my people. While you were fighting at Waikato, and at Tauranga, I lived quietly at Hauraki . . . We have heard from former Governors and from yourself that the law would protect the lands, persons and property of those who lived in peace. This was a sacred word of the Queen and of you the Governor. If any person or Tribe gave (sold) Tauranga it would not be right, because the land did not belong to him (or them) – the land belonged to us . . . We will not talk secretly to you, our talk will always be in the daylight.[15]

Te Kou o Rehua was protesting over the secret dealing that had gone on at Auckland. He continued to protest, and in December 1864, he sent a petition to Parliament on behalf of Ngati Pukenga asking for the return of the land that had been 'taken by the hand of Ngaiterangi, together with the Governor'.[16]

Other claims came from Marutuahu leaders such as Te Hira, Te Moananui, and Taraia Ngakuti. Te Hira submitted his claim about a week after the payment of the £1000 deposit to the Ngai Te Rangi chiefs, and Taraia threatened to take back the Katikati portion of the purchase by force if his interests were not taken into account.[17]

---

13. Enoka Te Whanake, 'Proceedings of a Meeting Held with the Tauranga Natives', 26 February 1866, AJHR, A-20, p 20
14. Riseborough lists eight letters of protest written to Grey, Shortland, Mackay, and Fox between 23 August and 22 October 1864: doc A23, pp 30–31. The letters and translations are in Native Affairs Committee files in Le 1/1865/138, ArchNZ.
15. Te Kou o Rehua 'and all his runanga' to Grey, 21 September 1864, Le 1/1865/38, ArchNZ (doc A23, p 31)
16. Document A23, pp 31–32
17. Document M9, pp 145–146

In September 1864, Fox complained to Grey that such claims to '*all* the Ngaiterangi country' (emphasis in original) were based on 'the barbarian basis, that they fought there' and, in the case of Taraia, that in 1842 'he there celebrated the last cannibal feast that occurred in New Zealand'. Such claims, Fox continued, were 'an early and very clear proof of the inconvenience and impolicy of the cession principle as opposed to that of confiscation'. Moreover, Fox expected to see:

> unlimited claims of the same sort as these wherever the 'Cession' principle may be attempted, none of which would probably have been heard of had the principle [of confiscation] laid down in His Excellency's proclamation of 11 July 1863 been consistently adhered to and made the basis of what is after all *a forced acquisition of Native lands under the colour of a voluntary sale*. [Emphasis in original.][18]

The last part of Fox's statement has received considerable attention from both the claimants and the Crown, and we shall return to it below. Here, we merely note that Fox was clearly angered by Grey's promotion of a cession, believing that it had allowed a rash of claims that questioned 'Ngaiterangi's' exclusive title to the Te Puna–Katikati blocks. None the less, it was Fox's view that because the preliminary agreement had been made it was necessary to persist with the purchase, fulfil the Crown's obligation to the Ngai Te Rangi sellers, and deal with the rival claims.

7.3.2 Clarke–Mackay arbitration

The first claims to be dealt with were those of Ngati Tamatera. As James Mackay reported, the iwi sent a deputation to Fox, led by Te Moananui, to protest:

> against the sale by Ngaiterangi of the land at Katikati . . . It was then arranged that Ngatitamatera and Ngaiterangi should each select six representatives of the tribe, and that Mr H T Clarke, Civil Commissioner, Tauranga, and myself should act as arbitrators in the matter.[19]

The arbitration was not undertaken until after Grey had accepted the resignation of the Whitaker–Fox Ministry, whereupon it was held in Auckland over five days in late December 1864. Clarke and Mackay both acted as arbitrators, Clark for Ngai Te Rangi and Mackay for Ngati Tamatera, the only Marutuahu iwi involved. Te Moananui was the 'spokesman' for Ngati Tamatera, and Hohepa Hikutaia and Te Harawira were 'speakers' for Ngai Te Rangi. The two parties were said to have behaved in 'a most orderly and praiseworthy manner throughout'. The decisions of the two arbitrators were tabulated in six parts. We summarise them as follows:

18. Fox to Grey, 24 September 1864, G17/3 (doc A23, p 32)
19. Mackay to Fitzgerald, 16 December 1865, AJHR, 1867, A-20, p 16

1. The boundaries of the land claimed by Te Moananui, which ran from Katikati Harbour to the western boundaries of the Katikati block and then along the summit of the Kaimai Range to Te Aroha, were described.
2. Te Moananui's descent from the original occupants of Tauranga Moana, Ngati Ranginui and Waitaha, was accepted by Ngai Te Rangi, giving him a title by inheritance.
3. It was acknowledged that Ngai Te Rangi had come into the district from the east and, after having fought with various branches of Ngati Ranginui and Waitaha, had located themselves at Tauranga.
4. Ngai Te Rangi's claims to Tauranga were based on conquest, not inheritance.
5. Ngai Te Rangi had often fought the ancestors of Te Moananui, and at different times one or other side had been victorious and occupied Katikati.
6. Te Moananui left the land claimed by him just before Hongi's invasion, and neither Ngati Tamatera nor Ngai Te Rangi had permanently occupied the land since then, though Ngai Te Rangi had exercised 'certain rights of ownership' and Te Moananui had also exercised 'similar rights', though not to the same extent.

These conciliatory statements formed the basis for the arbitrators' recommendation, which was that the land described in the first point of their decision, except for a piece between Te Kahakaha and Nga Kuri a Whare, be surveyed and valued, and the purchase money be equally divided between Ngati Tamatera and Ngai Te Rangi. The land concerned was subsequently surveyed as the Katikati block. A postscript recommended that any burial grounds be reserved from the sale. (We describe the payments and the resulting deeds of sale below at section 7.5.1.)

Though the arbitration seems to have been concluded amicably, we note that it applied to only the Katikati block and did not include a larger claim, made by Taraia and his section of Ngati Tamatera, which extended into the adjoining Te Puna block. The decision of the arbitrators was to be implemented after the land had been surveyed and valued, and Clarke and Mackay agreed both to be present while this took place to prevent any disputes about the boundaries and to value the land.[20] However, the survey of this portion of Katikati was delayed by threats from 'rebel Ngaiterangi and Pai Marire Ngatiporou', as Mackay put it, and by a dispute between Mackay and the chief judge of the Native Land Court over who was responsible for the survey.[21] Eighteen months later, when Mackay and Clarke met with Hauraki and Tauranga Maori to settle claims to the Te Puna–Katikati blocks, Te Moananui's claim had still not been surveyed.

20. Ibid
21. Document M9, pp 149–152

7.3.3 Clarke and Mackay's report on Ngati Pukenga and Waitaha claims

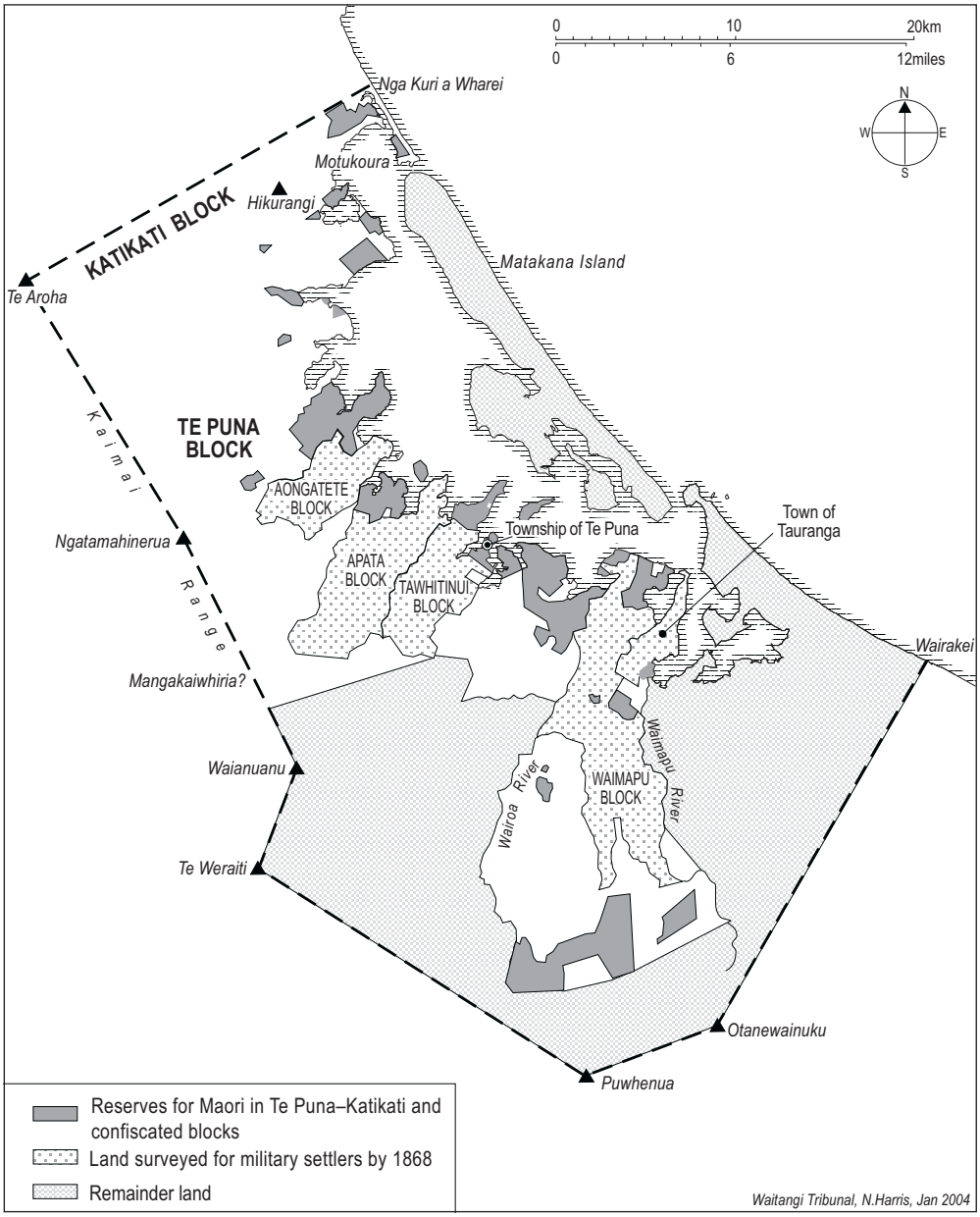
Mackay and Clarke were also asked to inquire into and report on Ngati Pukenga's petition of 5 December 1864, which alleged that their land had been 'wrongfully sold to the Government by Ngaiterangi'.[22] The investigation lasted four days, and Mackay and Clarke heard evidence from representatives of both Ngati Pukenga and Ngai Te Rangi. Their report, which was not issued until June 1865, stated that Ngati Pukenga, who descended from Waitaha, had been expelled from Tauranga by Ngai Te Rangi some 70 years previously. In 1855, they were reinstated to 'a small portion of their original claims' after they assisted Ngati He and Ngati Hoko in a dispute over an eel weir with other Ngai Te Rangi hapu. Mackay and Clarke recommended that Ngati Pukenga could 'fairly claim' only that land that they had retained possession of or that had been 'returned to them by their former conquerors'.[23] Though Mackay and Clarke did not specify where this land was situated, their report formed the basis for a negotiated settlement of the Ngati Pukenga claim to Te Puna–Katikati. We discuss this at section 7.5.2.

A similar claim made on behalf of the Te Arawa hapu Waitaha was submitted to the Government around the time of the Ngati Pukenga claim. Te Kou, apparently claiming descent from both tribes, was amongst the four claimants who signed a petition asserting interests in Te Puna–Katikati on behalf of Waitaha.[24] However, no notice was taken of this separate claim, although Te Arawa claims to land to the south and east of the Te Puna–Katikati blocks were recognised, as we note in chapter 10.

7.3.4 Ngati Haua claims

Wiremu Tamihana asserted claims in the Te Puna–Katikati blocks on behalf of Ngati Haua. Tamihana wanted to be sure that any survey of the blocks did not affect land that had been gifted to his father, Te Waharoa, at Omokoroa. Heale also claimed that he was warned by Tamihana not to 'extend his surveys inland'. Tamihana did not seek financial redress but he did want to retain possession of land that he claimed belonged to Ngati Haua. Enoka Te Whanake reacted to the claim by stating that 'the land had been surrendered to the Governor . . . and the Ngai Te Rangi would not allow any interference'. Clarke also stated that 'Ngaiterangi' disputed Tamihana's claim and that, in his opinion, Ngati Haua had occupied land in the Te Puna block only 'on sufferance'.[25] In this instance, Ngai Te Rangi leaders used the surrender of their mana over Tauranga land to Grey to dispute the rights of others to the Te Puna–Katikati lands. Although Ngati Haua received no payment from the sale of Te Puna–Katikati, they did get several reserves in the Te Puna block at Omokoroa, as we note below (see sec 7.5.1).

22. Weld to Mackay, 13 December 1864, AJHR, 1867, A-20, p 11
23. Mackay to Native Minister, 22 June 1865, AJHR, 1867, A-20, p 11
24. Te Kou and others to Governor, 8 October 1864 (as quoted in doc A23, p 31)
25. Document M9, pp 144, 147



Map 14: Tauranga military settlements

7.4 Te Puna–Katikati and the Confiscation

Before we examine the final deeds and payments for Te Puna–Katikati, we need to attempt to explain the lengthy delays that occurred.

Heale arrived in Tauranga in September 1864 to oversee surveying in the district. He began by setting out two proposed military settlements at Te Papa and Te Puna, the latter inside the Te Puna purchase block. By April 1865, Heale had surveyed not only the Te Papa and Te Puna townships into one-acre sections but also much of the land between into 50-acre sections.

However, he did not survey the boundaries of the proposed Te Puna–Katikati blocks, because growing Maori opposition had forced the withdrawal of the surveyors from Tauranga. Particularly strong objections were made to an attempt to survey across the Wairoa River and thus include land running to the boundary of the Te Puna purchase within the proposed 50,000-acre confiscation block. We discuss this further in chapter 9.

As we concluded in the previous chapter, Heale's vigorous plea that private land purchases would endanger the plans for military settlements probably tipped the balance in favour of the confiscation. The Order in Council purporting to apply the New Zealand Settlements Act to Tauranga was issued on 11 May 1865, and the district it described included the Te Puna–Katikati blocks. The New Zealand Settlements Act specifically allowed for military settlements to be established on non-confiscated land. Despite this, Heale appeared to think that it was necessary for the Te Puna–Katikati blocks to be included in the confiscation district before the Government could locate some of the military settlers on the land he had surveyed at Te Puna. One military town settlement – Te Puna – and three military farm settlements – Tawhitinui, Apata, and Aongatete – were eventually surveyed in the purchased block.[26]

The 11 May Order in Council exceeded the provisions of its empowering Act in two key respects. First, it purported to take the entire district, rather than the land required for settlement within it. Secondly, it purported to authorise the Governor and his officials, rather than the Compensation Court, to arrange the settlement of the confiscated land and the allocation of reserves (see sec 6.4). This situation, therefore, applied to the Te Puna–Katikati blocks when Mackay and Clarke were trying to arrange reserves as 'compensation' and to complete the Te Puna–Katikati purchase after May 1865. While in theory the Government could have taken the Te Puna–Katikati blocks as confiscated land, by the time the Order in Council was issued it was already committed to purchasing them. This was because it had already made an initial payment to the Ngai Te Rangi chiefs and made promises to other claimants as a result of the Mackay–Clarke arbitration. Purchases of Maori land by the Crown were not uncommon in confiscated districts elsewhere; for example, such transactions occurred in southern Taranaki, as the Tribunal noted in its *Taranaki Report*.[27] Another important consequence of the wording of the Order in Council was that it gave officials in Tauranga the freedom to arrange reserves in the Te Puna–Katikati blocks as they saw fit. Indeed, Clarke and Mackay had already begun to do this before the order was proclaimed. We discuss this matter more fully below at section 10.3.

26. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), p 108
27. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 171–198

7.5 Settlement of the Claims

7.5.1 1866 negotiations

Progress in finalising the purchase was slow after 11 May 1865. In September, Chief Judge Fenton complained that the Katikati block was still not surveyed, although he had advanced money for the job to a surveyor.[28] Mackay explained a fortnight later that he could not allow the survey to go ahead since he feared that this would provoke a fight between Ngai Te Rangi and Ngati Tamatera – the section of Ngati Tamatera not party to his earlier arbitration with Te Moananui was threatening to advance its claims as far as Te Puna. A further complication was that 'rebel Ngaiterangi and Paimarire Ngatiporou' had threatened to take Mackay's life, and he refused to undertake the survey without a military escort (the 'Paimarire Ngatiporou' in question had been ejected from Kennedy's Bay on the Coromandel Peninsula and were now living near Katikati).[29] The Native Minister, James FitzGerald, decided to delay the survey while he sought an opinion from Clarke. Although Clarke replied briefly on 10 October,[30] the Weld Ministry resigned six days later and it was left to yet another group of Ministers to deal with the Te Puna–Katikati purchase and the numerous other problems besetting Tauranga.

Colonel Haultain, the Defence Minister in the new Stafford Ministry, met Tauranga Maori in February 1866 and promised them that the terms of the purchase of 'certain lands' for which they had received £1000 would be honoured by the Government.[31] A month later, Grey himself arrived in Tauranga with none other than his old adversary, Whitaker, who had been appointed superintendent of, and general Government agent in, the Auckland province. Grey and Whitaker's main objective was to settle the disputed boundaries of the confiscated block, including the western boundary, which the Government wanted to extend to Te Puna. However, they met with considerable opposition from local Maori, and it was only after Grey threatened that 'if necessary they should again be put down by force of arms' that Ngai Te Rangi, through their spokesman Enoka, acquiesced.

Whitaker then turned his attention to the Te Puna–Katikati purchase, telling Clarke on 10 April: 'Te Puna is not settled. I have adhered to the purchase, and it has been arranged that a meeting of all interested shall take place at Katikati . . . not to discuss the purchase, but to settle who are to receive the money.'[32] In the event, the meeting took place at Tauranga, not Katikati. It lasted from 29 June to 19 July 1866 and appears to have been essentially an arbitration by Mackay and Clarke with the various claimants, very much like their earlier arbitration

28. Fenton to Native Minister, 3 September 1865, AJHR, 1867, A-20, p 15
29. Mackay to Fitzgerald, 16 September 1865, AJHR, 1867, A-20, pp 16–17
30. Clarke to Richmond, 20 September 1865; Clarke to Fitzgerald, 10 October 1865, AJHR, 1867, A-20, pp 19–21
31. 'Proceedings of a Meeting held with Tauranga Natives', 26 February 1866, AJHR, 1867, A-20, p 20
32. 'Memorandum for Mr Henry Clarke', 10 April 1866, AJHR, 1867, A-20, p 64

discussed above (see sec 7.3.2). For details of this meeting, we are dependent on Mackay's retrospective account of a year later.[33]

According to Mackay, members of the Te Arawa, Ngati Haua, Ngati Tamatera, Ngati Maru, Ngati Pukenga, Ngati Paoa, and Ngai Te Rangi tribes attended the meeting.[34] Pirirakau were also present for part of the meeting, and for some of them it was the first time they had emerged from the bush since the Tauranga war, though they soon left when they felt they had been insulted by Ngai Te Rangi. Mackay summed up the results of the meeting, including the payments that he and Clarke had agreed to. We follow the order of Mackay's summary below but abbreviate it somewhat:

- Te Arawa claims to the Te Puna–Katikati blocks were not admitted, nor were their claims on lands to the west of these blocks, though claims to the south-west of a line from Waimapu to Puwhenua were noted. Mackay said that Te Arawa 'strongly contested the claims of the Ngaiterangi to lands at Puwhenua'.
- Ngati Haua claims were admitted for 400 acres at Omokoroa, 50 acres at Purakaunui, and eight acres at Hurahua. The iwi's rights in the Te Puna–Katikati blocks were due to the gifting of land to Te Waharoa for his help during the 'musket wars'. No claims through ancestry or conquest were admitted, and no monetary compensation for Te Puna–Katikati was offered.
- Ngati Maru made a claim as joint occupiers with Ngai Te Rangi of land at Tuapiro and Te Tahawai. They agreed to take £530 for this, but because their claims overlapped to a considerable degree with those of Ngati Tamatera, they later agreed to combine this sum with the payment to the latter tribe.
- Ngati Tamatera (Te Moananui's faction now combined with Taraia's) agreed to take £600 for their half share in the Katikati block, as had previously been arbitrated by Mackay and Clarke in December 1865. Mackay also noted that Te Moananui had accepted payment of £380 from Whitaker for 'some other claims of that tribe'.
- For their interests, Ngati Pukenga accepted an offer of £500 and a promise of two town lots and one rural lot of 100 acres.
- Ngati Paoa agreed to accept £100 for their claims to land near Mount Hikurangi.
- Ngati Whanaunga of Thames were offered £25 for their 'small claim' (though details of this claim were not specified).
- According to Mackay, Ngai Te Rangi, 'although combined against all the people above mentioned, have innumerable family feuds among themselves and it was found impossible to come to any definite terms with them, because of their own disagreements'. He added that they 'preferred a lump sum and required nearly all the best of the land to be made into reserves for themselves'. The amount of the lump sum was not specified.

33. James Mackay, 'Report on the Katikati Purchase and Other Questions Relating to the District of Tauranga', 26 June 1867, Le 1/1867/114 (RDB, vol 7, pp 2316–2354)
34. Ibid (pp 2329–2334)

- Pirirakau's situation was dealt with at some length. They claimed 'all the land from Te Wairoa to Waipapa' and back into the hills, although only the latter claim was accepted by Ngai Te Rangi. Nevertheless, Ngai Te Rangi allowed the claim of the old Pirirakau chief Maungapohatu to some of the coastal land between Wairoa and Waipapa. After the rest of Pirirakau withdrew from the meeting, Mackay attempted to make a separate arrangement with them for the settlement of their claims, but that fell through. Though Pirirakau admitted that Ngai Te Rangi had given them £100 from the deposit paid on Te Puna–Katikati, 'they did not consider it binding between them and the Government, as it was given to them by Ngaiterangi and not by any officer of the Crown'.

These agreements formed the basis for the formal deeds subsequently negotiated by Mackay, though there were some variations in the conditions of each deed.

7.5.2 Hauraki payments

After the Tauranga meeting, Mackay returned to Auckland, whereupon Whitaker instructed him to proceed to Thames and pay Hauraki Maori for their claims to Te Puna–Katikati, according to the arrangements agreed at Tauranga.[35] This, he did, paying the Hauraki claimants a total of £2160 over the next two months as follows:

- A payment of £100 was made to the Ngati Hura hapu of Ngati Paoa on 10 August for their claims over Katikati and Te Aroha. A deed of conveyance was signed by five members of Ngati Hura, surrendering their rights to both Katikati and Te Puna.
- A payment of £500 was made to the Ngati Pukenga of Manaia on 14 August for claims between Katikati and Waimapu and inland to the mountains. Of this, £150 was paid for their interests in the Te Puna–Katikati blocks and £350 for interests in the confiscated block. In the deed signed by 18 members of Tawera, two 50-acre sections and two town allotments at Te Papa were 'reconveyed' to Ngati Pukenga chiefs Paroto Tawhiorangi, Ruka Huritaupoki, and Te Riritahi. The fate of these sections is discussed in chapters 10 and 11. The deed conveyed Ngati Pukenga's claims to 'the Katikati, Puna, Wairoa and Waimapu blocks' to the Crown.
- A payment of £1145 was made to Ngati Tamatera and Ngati Maru on 3 September for claims over Katikati, Aroha-atua, and land 'between the Katikati piece and Te Puna'. Five 'burial ground reserves', totalling 75 acres, were also recorded as being set aside for them in the deed of conveyance, which was signed by Te Moananui, Taraia, and 24 others.
- A payment of £25 was made to two claimants from Ngati Whanaunga. This was later increased to £35, and the two claimants signed the same deed as Ngati Tamatera and Ngati Maru had. The nature of the claim was not recorded by Mackay in his report, and the date of the payment is also unknown.

35. Ibid (pp 2331)–2337

- A separate payment of £380 was made to Te Moananui for some unspecified 'other claims'. As we noted above, this had been paid by Whitaker before Mackay and Clarke's meeting to settle claims.

7.5.3 'Ngaiterangi' payments

Late in October 1866, Whitaker sent Mackay back to Tauranga, where he and Clarke were to complete the settlement of Ngai Te Rangi claims to Te Puna–Katikati, as well as the arrangements for reserves in the confiscated block. Mackay invited the claimants to a meeting on Motuhoa Island starting on 31 October. Pirirakau, he said, were '*specially* asked to come' (emphasis in original), and they were assured that they would not be molested, since they might have been in fear of arrest over 'stealing the surveyors' instruments' (see sec 9.4). Despite this assurance, except for Maungapohatu's whanau, no Pirirakau attended.[36]

Much of the meeting was spent discussing questions related to reserves in the confiscated block and the disputed boundary of that block across the Wairoa River. When the question of payment for Te Puna–Katikati was considered, representatives of the Ngai Te Rangi hapu finally agreed to accept further payments of £6000 for their rights in Te Puna, and £700 for their rights in Katikati (including £100 for 'some old burial grounds and "tapu"').[37] Mackay added that, although 'Ngaiterangi' were 'pressed to have the land surveyed . . . and the area ascertained' before he would permanently fix the cash payment to be made for it, they 'obstinately refused to do so' – they wanted to be paid a lump sum immediately. They took this position because their preliminary agreement to sell the land had not provided for reserves and they apparently believed that if land were surveyed it would automatically become Crown land.[38] But now, at the Motuhoa meeting, Mackay agreed to have 6000 acres of land of 'great value', most of it 'with harbour frontage', set aside for the hapu, along with a 1000-acre reserve to be administered under the provisions of the Native Reserves Act 1856.[39] The allocation of these reserves is discussed in chapter 10.

On 3 November, the payment for the blocks and the general location of some of the reserves were recorded in a deed of conveyance which was signed by 24 members of Ngai Te Rangi. Among the signatories were several important rangatira, such as Hori Ngatai and Hori Tupaea, who had not been party to the original agreement to sell.[40] Although Mackay referred to the participants as 'Ngaiterangi', he was using this term in a general sense – Maungapohatu, who led the small surrendered section of Pirirakau, was party to some of the

36. James Mackay, 'Report on the Katikati Purchase and Other Questions Relating to the District of Tauranga', 26 June 1867, Le 1/1867/114 (RDB, vol 7, pp 2341–2343)
37. Ibid (pp 2345–2346)
38. Ibid (pp 2346–2347)
39. Ibid (p 2346)
40. Henry H Turton, *Maori Deeds of Old Private Land Purchases in New Zealand from the Year 1815 to 1840 with Pre-emptive and Other Claims* (Wellington: Government Printer, 1882), pp 638–641

arrangements and signed the deed.[41] Mackay claimed that the only persons of note who did not sign the deed were Pene Taka of Ngati Rangi and Rawiri Tata and Te Keepa Ringatu of Pirirakau, none of whom was present at the Motuhoa meeting.[42]

Mackay reported that all the Ngai Te Rangi he encountered were content with the arrangements for the purchase of Te Puna–Katikati. The payments he made to some Ngai Te Rangi leaders, such as Enoka Te Whanake, who had previously expressed dissatisfaction about the sale, seem to have dealt with any opposition as far as he and Clarke were concerned. But, although payments were agreed to and reserves were promised, the acreage and boundaries of the transaction remained undefined because no survey of the block had taken place.

7.5.4 Pirirakau and the Te Puna–Katikati purchase

After meeting Tauranga Maori at Motuhoa Island to arrange to whom payments would be made, Mackay travelled to the inland Pirirakau settlement of Waiwhatawhata. There, he discussed the Te Puna–Katikati purchase and the status of the Tauranga lands in general. Mackay told Pirirakau that, if they had claims in Te Puna–Katikati, they could receive a share of the purchase money and land could be reserved for them. In reply, he was reportedly told by Rawiri Tata, the leader of the majority section of Pirirakau, that:

> You shall have no land from me for my participation in rebellion, and none for your money. I have been at war in Taranaki and at Waikato, and will give up none here. I have not made peace with you and do not mean to do so. I do not admit the right of the Ngaiterangi to give up my land, even though I have been in rebellion . . . Let Ngaiterangi have your money, but I will not let you have my land.[43]

Further attempts to settle the dispute with Pirirakau were blighted by Mackay's support for extending the survey of the confiscated block across the Wairoa River and by the 1867 bush campaign that followed. We discuss this in chapter 9.

The final payment for the Te Puna–Katikati blocks was not made until 1871. Following meetings with Clarke and Native Minister Donald McLean in Auckland, six representatives of Pirirakau, Ngati Hinerangi, and Ngati Tokotoko received £471.[44] This transaction was recorded in a deed that was for the 'conveyance and surrender' of Te Puna and Katikati by 'the chiefs and people of the tribes Pirirakau and Ngatihinerangi'.[45] Although some Pirirakau and Ngati Hinerangi had written to McLean earlier to request a payment in exchange for their interests in Te Puna, the only Pirirakau who signed the 1871 deed were James Potier and Te

41. Document A13, pp 51–52
42. James Mackay, 'Report on the Katikati Purchase and Other Questions Relating to the District of Tauranga', 26 June 1867, Le 1 1867/114, ArchNZ (RDB, vol 7, pp 2346-2347) (doc M9(c)(82))
43. Rawiri Tata, in Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 28
44. Document M9, pp 156–158
45. Turton, p 642

Keepa Ringatu. It is doubtful whether many other Pirirakau assented to the transaction.[46] Battersby pointed to this transaction as showing that Pirirakau applied for cash in exchange for their rights in Te Puna–Katikati.[47] We disagree. The transaction took place in Auckland between Clarke and two men whose authority to represent Pirirakau as a whole is uncertain. Tata and Parata did not sign the deed, despite the fact that Clarke had stated that their signatures were necessary 'as a guarantee of good faith'.[48] Furthermore, Mackay had previously negotiated with Te Keepa Ringatu in Tauranga to settle Pirirakau's claims to Te Puna–Katikati, but that proposal had been rejected by the rest of Pirirakau.[49] Throughout the 1870s, Pirirakau continued to protest over both the taking of the confiscated block and the Te Puna–Katikati purchase.[50]

7.5.5 Summary

By our calculations, the Crown paid £10,331 for the 85,213 acres that it acquired in the Te Puna–Katikati blocks.[51] That amounted to two shillings fivepence per acre. Yet, despite the completion of the agreements with the various claimants, the extent of the Te Puna–Katikati blocks remained undefined.[52] Indeed, the block boundaries remained unsurveyed in 1880, when Percy Smith, the Auckland district surveyor, refused to survey them, because, as he put it, of the 'uncertain nature of the boundaries' and the possibility of 'opening up the question of the confiscation boundary'.[53] The inland boundaries of the blocks were not surveyed until well after 1886.

7.6 Claimant and Crown Submissions

7.6.1 Claimant submissions

In their joint submission, counsel introduced the Te Puna–Katikati transaction by saying that the claimants did not accept that it was a 'purchase' at all.[54] Rather, it was, as Fox admitted, 'a forced acquisition under the colour of a voluntary sale'. This admission, counsel argued, disclosed the transaction's real character. As further evidence of the coercive nature of the 'purchase', counsel relied on a statement by Clarke that it was 'distinctly understood by the

46. Document M9, p 157; doc A47, p 119
47. Document M9, p 159
48. Clarke to Native Minister, 13 January 1871 (RDB, vol 78, p 29,891) (doc A47, p 119)
49. James Mackay, 'Report on the Katikati Purchase and Other Questions Relating to the District of Tauranga', 26 June 1867, Le 1/1867/114 (RDB, vol 7, p 2334)
50. Document A2, pp 187–190
51. That is, 93,188 acres less 7975 acres of reserves leaves 85,213 acres.
52. Document L1, pp 16–17
53. Percy Smith to Surveyor-General, 1880, DOSLI files 1/5 (as quoted in doc A57, p 58)
54. S R Clarke, joint closing submissions, eleventh hearing, 3 December 2001, tape 3, side A

Natives at the time that peace was made, that Te Puna would be absolutely required by the Government'. Counsel also stressed that the 'sale' took place against a background dominated by the recent battles of Pukehinahina and Te Ranga, considerable loss of life, surrender, the pacification hui, and the presence of troops. Accordingly, it was submitted, 'any suggestion that the Katikati–Te Puna "purchase" was voluntary must be emphatically rejected'.[55]

Counsel said that the 'purchase' was a reaction by Whitaker and Fox to Grey's promise to take only one-quarter of the Tauranga lands, an area insufficient for their confiscation and settlement plans. It was argued that the 'forced acquisition' of Te Puna–Katikati was intended to thwart Grey's promise to return three-quarters of the district to Ngai Te Rangi. Once the 93,188 acres of Te Puna–Katikati were added to the 50,000 acres of the confiscated block, the total taken amounted to 143,188 acres, just over two-thirds of the 214,000 acres confiscated by the Order in Council.

Claimant submissions questioned whether the nine Ngai Te Rangi loyalist rangatira who signed the initial receipt for the sale were representative even of the iwi, let alone all Tauranga Maori. Important Ngai Te Rangi rangatira such as Hori Tupaea, who had remained neutral during the Tauranga war, and Enoka Te Whanake and Hori Ngatai, who had just surrendered, were not signatories. Within a month of the preliminary transaction, protests had been received and claims lodged from Te Tawera, Te Arawa, Ngati Tamatera, Waitaha, and Ngati Ranginui. In the joint submission, counsel added that it was 'inconceivable' that the Government officials did not know of such claims, in particular the claims of the Hauraki people to the Katikati block. It was in response to these claims that Fox wrote his much quoted memorandum to Grey.[56]

The joint submission attempted to refute the notion, raised in Battersby's evidence, that 'Ngaiterangi' wanted to create a buffer zone of European settlement that would protect them from their Ngati Tamatera enemies and that this goal influenced their decision to 'sell' Te Puna–Katikati. Claimant counsel did not question the correctness of the Clarke–Mackay arbitration, but they did complain that their terms of reference confined them to discussing only who was to receive payment and not the purchase per se. They added that there was clear evidence that some Maori protested against the sale itself.[57]

We note several other submissions that made additional points. Wai 227 claimant counsel argued that, since Pirirakau claimed 'mana whenua' over land between the Wairoa and Waipapa Rivers, and use rights as far west as the Aongatete River, the Te Puna–Katikati purchase included 'a vast tract' of their lands.[58] Counsel also doubted that the May 1871 payments were made to the acknowledged leaders of Pirirakau. Counsel for the Wairoa hapu said that the Crown imposed the transaction on those hapu, and not only did it do so without

55. Document N11, pp 116–117
56. Ibid, pp 119–122
57. Ibid, pp 127–135
58. Document N9, p 16

investigating their customary ownership of the land or the location of urupa and wahi tapu but it did so without their agreement and without paying them for their interests in it.[59]

The submission on behalf of Ngai Te Rangi argued that the 'chiefs who had been used in the transaction, while having mana, were not the tribe, and as a small group of individuals acting of their own accord, they had no right to "convey" to the Crown that which they did not exclusively possess'.[60] The submission on behalf of Ngati Pukenga argued that the purchase was initiated without carrying out an investigation into their interests and without obtaining their consent. It was unilaterally imposed on them, leaving them at the mercy of Crown officials when compensation was subsequently awarded them. Their counsel argued that the confiscation of the Tauranga district, including Te Puna–Katikati, was imposed by the Order in Council to prevent a proper inquiry into the validity of the purchase. All of these actions were alleged to be in breach of the Crown's Treaty duty to protect Ngati Pukenga.[61]

A submission from counsel for the Hauraki and Marutuahu claimants briefly discussed Hauraki claims to the western part of the district before listing alleged breaches by the Crown of the principles of the Treaty. These alleged breaches centred on the Crown's failure to inquire adequately into or to recognise Marutuahu interests in Te Puna–Katikati.[62]

In their joint submission in reply to the Crown, claimant counsel stated that, when Grey failed to intervene in the sale, his promise of returning three-quarters of Tauranga land immediately became 'a lie'. Counsel reiterated that the Te Puna–Katikati transaction could not be thought of as a genuine sale. Several reasons were given for this assertion, among them that Tauranga Maori had just been defeated in battle, that only a small number of loyalists were paid the original deposit, and that protests immediately ensued. In addition, counsel argued that all those with ownership rights would have had to agree to the sale but that this 'basic legal principle' was not applied. Finally, the joint submission in reply raised various alleged breaches of Treaty principles in relation to the Te Puna–Katikati purchase. These included the Crown's failure to honour article 2 promises of active protection of Maori and their land and its failure to ensure that Maori retained a sufficient endowment of land for their present and foreseeable needs.[63]

7.6.2 Crown submissions

In the Crown's closing submissions, counsel acknowledged that the 'outcome of the Pacification hui would have been disappointing for Grey's Ministers' since insufficient land would have been confiscated for their settlement schemes. The Crown accepted that it was for this reason that the Te Puna–Katikati purchase was initiated, and it acknowledged that Whitaker

59. Document N14, p 18
60. Document N20, p 33
61. Document N21, p 10
62. Document N16, pp 21, 42–43
63. Document P8, pp 29–34

and Fox had 'made their views on the "necessity" of the purchase known to Maori soon after the Pacification hui'. However, the Crown submitted that over the previous 20 years Maori had indicated a willingness to sell the land and that throughout the negotiations that followed there was 'no record of any objections being made by Maori to the fact of the sale (as opposed to objections about the identity of the appropriate payees)', with the exception of the unsurrendered Pirirakau. Crown counsel said that Grey did not object to the purchase and did not perceive it to be contrary to his promise to return three-quarters of the land.

The Crown concluded from this that the transaction could not be regarded as 'being achieved under circumstances of duress, let alone being akin to some form of confiscation'. So far as Fox's later, much quoted, memorandum was concerned, the Crown said that it had to be read in context. According to Crown counsel, Fox conflated 'cession with sale (both of which require bothersome and time-consuming agreement) and contrast[ed] them to confiscation'. The Crown added that the attempts to include Pirirakau in the deal provided further evidence rebutting the notion that the transaction could be regarded as a confiscation. The Crown concluded that Te Puna–Katikati was a genuine sale, and that a fair price was paid. A 'staged process' was necessary to effect the purchase, beginning with the initial deposit to the Ngai Te Rangi chiefs and continuing with the subsequent inquiry into other interests and fair payment for them. The Crown concluded its submission by saying that 'no better job could be done today and . . . for that reason any request by the claimants for the Tribunal to revisit the merits of the process should be firmly resisted'.[64]

7.7 Findings of Fact

Here we reach conclusions about the Te Puna–Katikati purchase in relation to some of the points of dispute between the Crown and the claimants that do not directly relate to alleged breaches of Treaty principle. Both sides agreed that Fox and Whitaker initiated the purchase because Grey's promise to return the 'three-quarters' jeopardised their settlement plans. This is an opinion with which we, too, concur. However, Grey's attitude to the Te Puna–Katikati purchase is harder to discern. Whatever his views of the transaction, he did not resist it, despite the fact that some of the land he had promised to return was now being acquired by the Crown. The Crown argued in this inquiry that Grey's non-intervention can be explained by the fact that he did not view the sale as being at odds with the promises he made at the pacification hui. Some witnesses before the Tribunal, on the other hand, argued that Grey did not object to the Government acquiring the vast majority of the district, so long as it appeared to his political masters in England that he was attempting to gain only a moderately sized cession.[65] Grey's motivation in allowing the purchase to proceed without objection is a

64. Document 02, pp 46–49
65. For example, see doc L1, pp 26–29

matter on which we do not have sufficient evidence to make a definitive conclusion. None the less, to our minds, a combination of both the reasons outlined above seems plausible.

The notion that Ngai Te Rangi feared an attack from Hauraki Maori, especially Taraia, and that this was a factor in the agreement to sell Te Puna–Katikati was alluded to in Battersby's evidence but not argued by Crown counsel in closing submissions.[66] As noted above, this alleged fear was reported by newspaper correspondents in the aftermath of the pacification hui but did not seem to be a factor in the subsequent negotiations for the Crown's purchase of Te Puna–Katikati. In our view, any fear of attack from Taraia or any Hauraki Maori was unlikely to have had a significant effect on the negotiations over Te Puna–Katikati, which were carried out with loyalist Ngai Te Rangi, who had little reason to fear other Maori. Although there may have been a fear latent among Ngai Te Rangi that their ancient feud with Hauraki might be revived, we need to remember that Taraia had been in the vicinity of Te Ranga, apparently to help in its defence, though he had failed to join the battle. In 1864, those Ngai Te Rangi who had fought against the Crown had more reason to fear Te Arawa – they had recently aided the Crown in repelling taua trying to proceed to the Waikato and Tauranga fronts and would soon assist the Crown in the bush campaign of 1867. It is more likely, in our view, that the Ngai Te Rangi fear of Taraia was used by Whitaker, Fox, and Mackay to justify the Te Puna–Katikati purchase after it had taken place.

The Crown submitted that the sale of Te Puna–Katikati in 1864 was not surprising in light of the fact that Maori had been willing to sell land in the area during the previous 20 years. However, the willingness of some Ngai Te Rangi to sell land on the Ongare Peninsula in the aftermath of the fighting in 1842 is the only example of any Tauranga Maori consenting to sell land in Te Puna–Katikati before 1864 that we are aware of.[67] And, as we noted in chapter 3, Colonial Secretary Shortland's proposal to purchase the disputed land was not carried through, partly, it seems, because it did not gain the approval of all the interested parties.[68] In any case, the area that some Maori agreed to put in the Government's hands in 1842 to settle the dispute was far more limited than the extensive Te Puna–Katikati blocks that the Government negotiated to purchase in the 1860s. We therefore conclude that previous attempts by the Crown to purchase land in the area shed little or no light on the nature of the Te Puna–Katikati transaction.

66. Document M9, p 143

67. In the mid-1850s, a CMS missionary, Thomas Lanfear, alluded to Hauraki Maori preparing to sell some land at Katikati. This is the only example presented to us of any Maori being willing to sell any of Te Puna–Katikati after Government moves to settle the Ongare dispute of 1842: see doc M9, p 143.

68. Document M9, pp 5–13

7.8 Treaty Findings

As we noted above (see sec 7.6.1), several claimant submissions quoted Fox to argue that the Crown's acquisition of the Te Puna–Katikati blocks was coercive: a 'forced acquisition . . . under the colour of a voluntary sale'. For this reason, they said, it was in direct contravention of article 2 of the Treaty, which allowed the Crown to purchase only such land as Maori were willing to sell. The Crown, on the other hand, argued that the blocks were properly purchased from willing sellers for an adequate price. Clearly, we are required to make a finding in light of Treaty principles on this issue.

We do not accept the main submissions of either the claimants or the Crown in their entirety. We do not accept the claimants' argument that the transaction was purely 'a forced acquisition' or that it was, as they sometimes put it, just another confiscation. But we must stress that neither do we accept the Crown's argument that Te Puna–Katikati was 'a genuine sale', for a fair price, that followed all the proper procedures. In our view, the initial Te Puna–Katikati transaction between the Government and some Ngai Te Rangi leaders was a sale of a kind that had much in common with some sales to the Crown of Maori land in Hawke's Bay and Wairarapa in the mid-1850s. In those purchases, a small number of chiefs were taken to Auckland or Wellington, where they signed preliminary deeds of sale. The transactions were later finalised by making further payments or paying 'compensation' to other claimants who could make their case to Crown officials. That process differed from an earlier Crown procedure, such as that used for the Ahuriri, Mohaka, and Waipukurau Crown purchases of 1851, where purchase agreements were negotiated openly before large hui on the home territory and deeds of sale were signed by all who asserted and were admitted to have a claim.[69] The process of negotiating secretly with a few cooperative chiefs was part of a move towards dealing in land on an individual rather than a tribal basis – a process that was to culminate in the Waitara war that eventually extended to Tauranga.

To what degree the loyalist Ngai Te Rangi chiefs who were taken to Auckland to sign the initial receipt were subject to pressure from the Government is an open question. The fact that they were taken to Auckland meant that they were freed from the constraints of public opinion back home. Ministers and officials openly admitted that the Government was intent on forcing the purchase, and in this context it was easier for them to apply pressure, if not to engage in outright coercion. But whatever the pressures on the chiefs who went to Auckland, we have seen no evidence to suggest that these loyalist Ngai Te Rangi were anything other than willing sellers. They were able to use the transaction to considerably enhance both their claims to the Te Puna–Katikati district and the payments flowing from its sale. Most of them

69. Dean Cowie, *Hawkes Bay*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, pp 23–40; Paul Goldsmith, *Wairarapa*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), 1996, pp 56–61; R W S Farger, 'Donald McLean, Chief Land Purchase Agent (1846–1861) and Native Secretary (1856–1861)', MA thesis, Auckland University College, 1947, pp 19–48, 69; Keith Sinclair, *The Origin of the Maori Wars* (Wellington: New Zealand University Press: 1957), pp 53–60

were awarded reserves in the Te Puna–Katikati blocks which they immediately sold (see sec 11.2). However, these loyalist sellers who signed the original receipt were not representative even of Ngai Te Rangi, let alone other claimants to the district. Other than Hohepa Hikutaia, those considered to be the key rangatira of the western harbour, such as Enoka Te Whanake, Te Moananui Maraki, and Hori Tupaea, were not party to the original decision to sell. Western Tauranga Maori – that is, those living on land from Otumoetai all the way up harbour to Otawhiwhi beyond Katikati – had mainly fought against the Crown at Pukehinahina and Te Ranga. Most of their rangatira who survived were not included in the party that went to Auckland, although some signed later transactions and received reserves in the block. Various other non-Ngai Te Rangi groups that protested at their exclusion from the original transaction also eventually received monetary compensation as a result of the Clarke–Mackay arbitrations.

Claimant and Crown submissions were at odds over these subsequent transactions. Claimant counsel argued that those who did not take part in the original transaction were therefore not consulted about the sale itself; they were merely given a chance later to claim compensation for their rights in land that had already been sold. The Crown responded that the initial deed was just that, the first of a necessarily staged purchase process. The original nine Ngai Te Rangi chiefs were paid a deposit on a transaction that was yet to be finalised with them and the other claimants, all of whom received the payments that they were entitled to for a sale that they never objected to.

To accept the Crown's view of the transaction requires a large imaginative leap. In our view, the Te Puna–Katikati purchase was similar to the Crown purchases in Hawke's Bay that we have mentioned above, where an initial transaction paved the way for a full and final sale. In the later stages of the sale, the Crown would not allow dissident claimants to halt the process or have their interests cut out – it simply paid them compensation for their proven interests. As we noted in section 7.5.1, Whitaker himself said that those later negotiations were 'not to discuss the purchase, but to settle who [were] to receive the money'.[70] Moreover, those 'negotiations' took place in a climate of open pressure. Tauranga was, in effect, under military occupation, and during the meetings at which payments for Te Puna–Katikati were discussed, the Government threatened further military action and the confiscation of the whole Tauranga district if local Maori refused to comply with their plans. It was in those later negotiations that, in our view, the real pressure was exerted, for the admitted claimants had either to accept the compensation and reserves, where reserves were offered, or to go without. It is that coercive process that we regard as being in breach of the principle of active protection embodied in article 2 of the Treaty. Specifically, the Crown could buy only such land as

70. Whitaker, 'Memorandum for Mr Henry Clarke', 10 April 1866, AJHR, 1867, A-20, p 64

Maori were willing to sell; it could not use the consent of a minority of the right-holders to impose a sale on the majority. It should instead have broached the possibility of a purchase at a large representative hui – as indeed it could have done openly at the pacification hui of 5 and 6 August.

We find that the Crown's purchase of the Te Puna–Katikati blocks, anchored as it was in the consent of a small minority of loyalist Ngai Te Rangi chiefs and subsequently imposed, with compensation, on other Ngai Te Rangi hapu and Ngati Ranginui, Ngati Pukenga, and Marutuahu, was in defiance of the Treaty promise that Maori land should be alienated to the Crown only with the free and willing consent of its owners.

Next, we consider the related issue of whether all those with customary claims in the blocks were eventually and sufficiently compensated. In particular, Pirirakau received little compensation and few reserves – certainly less than their share – though the Crown did grant a reserve to Maungapohatu and his section of Pirirakau. It also appears that the Wairoa hapu, who had well-established customary interests in Te Puna of which Clarke was aware, received little land or money by way of compensation. However, the Crown did negotiate as best it could with the unsurrendered Pirirakau and their allies. It promised to set aside reserves for them on the condition of surrender. Eventually, in 1871, Pirirakau were awarded some compensation, although this was clearly not negotiated by their leading rangatira. The failure to adequately compensate Pirirakau, despite some attempts to do so, again points to the inappropriate nature of the Te Puna–Katikati purchase process. The Crown's decision to initiate the transaction with a group of chiefs whose rights to the land were not complete meant that Pirirakau had to accept whatever payment was offered or get nothing. The option of retaining their land, as guaranteed by the Treaty, was not open to Pirirakau because of the means by which the Government purchased Te Puna–Katikati. Pirirakau may have been unsurrendered rebels in the eyes of the Crown, but as we spelt out in chapters 4 and 6, this did not give the Government unilateral authority to ignore their article 2 Treaty rights and take their land from them against their will.

There is also the further question of how fairly the compensation was divided between the various claimants. Although there was vigorous debate between the Ngai Te Rangi and Marutuahu claimants during our hearings, we heard no convincing argument to the effect that the Clarke–Mackay arbitration was wrong or unfair. In the circumstances, we accept that Clarke and Mackay's decisions and the amounts of monetary compensation that they awarded were fair in relative but not absolute terms. In our view, Marutuahu had claims only in the narrow Katikati block and in relatively limited portions of the Te Puna block, such as at Ongare. Accordingly, we think that the £2160 that the Hauraki tribes received for their interests was fair in proportion to the £7700 that Ngai Te Rangi received for their much more extensive interests. But, when we consider the reserves awarded alongside the monetary payments, it

becomes evident that Ngai Te Rangi, who received virtually all of the 8000 acres of reserves in Te Puna–Katikati, were more generously treated than Hauraki. The only promised awards of reserves to the Hauraki iwi were 75 acres of wahi tapu, which the claimants allege were never actually set aside by the Government.[71] This disparity between the relatively large reserves awarded to the Ngai Te Rangi chiefs and the virtually non-existent reserves awarded to Marutuahu and the Ngati Ranginui hapu is clear evidence of a failure to treat Maori equally according to their customary rights in Te Puna–Katikati.

Lastly, we consider whether the overall price paid for Te Puna–Katikati – estimated to be two shillings fivepence an acre – was fair. In its closing submissions, the Crown argued that at the time of the purchase there was no suggestion by anyone that the price was unfair. This was one of the factors pointed to by the Crown to prove that the sale was a genuine and proper transaction.[72] However, we reject the notion that a lack of documentary evidence of complaint over the price paid for Te Puna–Katikati is evidence in itself of assent to the purchase. As we have outlined above, the Government made it clear from the beginning of the acquisition process that the blocks were 'absolutely required' but that three shillings an acre would be paid for them. In this context, it is not surprising that there is no recorded dissent regarding the price paid. The meetings where the purchase was discussed were to decide the recipients of the payments, not to discuss the validity of the purchase itself or the adequacy of the price that the Crown had already stated would be paid. Ngai Te Rangi leaders eventually agreed to a payment that amounted to less than three shillings an acre because they were anxious to be paid before surveying of the land took place (owing to their mistaken belief that if land were surveyed it would be taken by the Government – see section 7.5.3).

Battersby argued that the price paid for the blocks was 'considerable'.[73] However, he did not state on what basis he came to this conclusion. Unfortunately, we do not have the evidence before us to make firm conclusions as to the adequacy of the price relative to other comparable Crown purchases of the time. However, if private land purchasers had been given the opportunity to purchase the fertile Te Puna–Katikati lands, it is likely that those with interests in the blocks would have received a higher price than the Government was willing to give them. As Heale and others recorded, private buyers were offering more pounds per acre than the Crown paid in shillings for the best portions of Te Puna–Katikati. The inability of Maori to receive a price for Te Puna–Katikati that approached anything like what the private market was offering is again due to the fact that the transaction was, at key points, coercive in nature.

71. From the evidence available to us, it appears that at least two Hauraki individuals, Te Hira and Te Pohika, were also awarded 115 acres of reserves in the parishes of Katikati and Tahawai, subsequent to Mackay and Clarke's initial allocations: see doc K3(a), pp 2–4.

72. Document O2, p 48

73. Document M9, p 159

7.9 Chapter Summary

The main points in this chapter are as follows:

- The Te Puna–Katikati purchase took place in the immediate aftermath of the pacification hui. Whitaker, Fox, and the other Ministers were eager to secure more land for military and general settlement than Grey's promise to take only a quarter of the district would allow. They therefore sought to acquire the extensive and fertile Te Puna–Katikati blocks, and as far as can be ascertained from the historical record, Grey did not object to this.
- A few loyal Ngai Te Rangi chiefs both made the original agreement with the Crown to sell the blocks and signed the first deed in Auckland in late 1864. There is no evidence that these chiefs were not free and willing sellers of their rights to Te Puna and Katikati.
- The purchase process was coercive in nature for almost all who held customary rights to the blocks – including surrendered Ngai Te Rangi as well as Ngati Pukenga, Ngati Ranginui, and Marutuahu. The only persons who were free and willing sellers were those few Ngai Te Rangi chiefs mentioned above. The others either accepted the compensation offered by the Crown or got nothing. The ability to negotiate a price akin to that which would-be private purchasers were willing to pay was one of the casualties of the purchase process. The majority of Pirirakau and the Wairoa hapu, who refused to give their assent to the sale, received no compensation for the loss of a vast tract of their rohe.
- Because of the coercive nature of the Crown's purchase tactics, most Tauranga Maori were not free and willing sellers of Te Puna–Katikati. The Crown was therefore in breach of the principles of the Treaty that required it to respect the rangatiratanga of the Tauranga hapu and to acquire from Maori only the land that they were willing to sell.

CHAPTER 8

THE CMS BLOCKS AT TE PAPA

8.1 Introduction

In this chapter, we examine two issues relating to the land that makes up the Te Papa Peninsula, which is often referred to as the CMS blocks. First, we consider the CMS's purchase in 1838 and 1839 of two blocks of land at Te Papa for a mission station, the Land Claims Commission's subsequent approval of the purchase in 1844, and the Crown's awarding to the CMS of a grant for the blocks in 1852. These issues were raised by several claimant counsel in their closing submissions and were responded to by the Crown. The claimants alleged that the Crown's validation of the CMS's purchases, acting as it did on the recommendation of the Land Claims Commission, breached the principles of the Treaty.

Secondly, we consider the way in which the Crown acquired four-fifths of the land at Te Papa in 1867. As we noted in chapter 4, the CMS land on the peninsula was occupied by British troops before the battle of Pukehinahina. Though the troops were withdrawn once the fighting was over, they were replaced by military settlers from the 1st Waikato Regiment, who were settled on both confiscated and purchased land. Although the CMS Te Papa blocks were within the geographical boundaries of the confiscation district described in the Order in Council of 18 May 1865, they were not 'Ngaiterangi' land, being held by the CMS by virtue of a Crown grant. Even so, the blocks spanned the peninsula, which had been chosen by the Crown for the principal settlement at Tauranga, and the Government entered into negotiations to purchase the land. In 1867, it concluded an agreement with the CMS whereby the society gifted four-fifths of the land to the Crown and retained the remainder. The claimants alleged that the acquisition of the Te Papa blocks by the Crown failed to take account of the fact that they were held by the CMS in trust for Maori beneficiaries. Crown counsel responded that the blocks were never held in trust for Maori and were acquired in a fair manner.

At this stage of our report, it is appropriate to examine the issues relating to the CMS blocks , since the 1867 transaction was closely connected with the Crown's wider arrangements for the selection and settlement of the 50,000-acre confiscated block (the confiscated block is the subject of our next chapter).

8.2 The CMS Purchases, 1838 and 1839

As we noted in chapter 2, a CMS mission station was first established at Otamataha, near the tip of Te Papa Peninsula, in 1835. The site was not permanently occupied until Alfred Brown arrived to become the resident missionary in January 1838. Soon afterwards, Brown began negotiations to purchase the land occupied by the mission station, but initially he was unsuccessful; he noted in his diary that local Maori were 'so exorbitant in their demands' that he feared he would be unable to reach an agreement with them.[1] Nevertheless, he did successfully negotiate the purchase of the mission site, later estimated at 30 acres, on 30 October 1838. He recorded in his journal that the purchase price did not exceed £20 and noted that 'it seems necessary in the present excited state of the natives to shew them by this act that we have no present intention of leaving them'.[2] The deed was signed by 17 rangatira and stated that the signatories: 'Ka tuku ka hoko, ki a Te Paraone, mo te hunga o te Hahi Mihanere, mo o ratou wanaunga mo amua tonu atu kia noho kia hoko kia aha noa kia aha noa i te wenua no o matou tupuna, no matou hoki.' This was translated in the English version as: 'do let go to and sell to the Rev A N Brown ('Te Paraone') on behalf of the Church Missy Society, and to their heirs or assigns for ever, the lands belonging to our fathers and to us also.'[3] The boundaries of the land were also set out in the deed.

Having acquired the mission site, Brown negotiated for the remainder of the Te Papa Peninsula. His journal entries over the next few months indicate that European settlers, including a trader named Nicholas, were also in treaty with Maori for sites in the vicinity.[4] Brown began his negotiations for the land in January 1839 and quickly acquired what he described as 'the principal signatures' on a deed of purchase. However, he withheld payment after discovering that a small group of owners were being denied a share of the proceeds by 'the leading claimants'. In the meantime, Nicholas intervened and did a deal for some of the land, which Brown managed to get revoked by asserting his prior claim. Then, on 27 March, Brown heard that 'some Europeans were again tampering with the Natives trying to purchase the land for which we are in treaty'.[5] Spurred on, he managed to complete his purchase three days later, 'albeit in a somewhat chaotic manner', as claimant researcher Vincent O'Malley described it.[6] The distribution of the payment was disputed. The result, Brown admitted, was that 'some of those entitled to a share were deprived of it, much dissatisfaction was expressed, and a small additional portion of Trade will probably have to be paid by us on a future occasion'.[7]

1. Alfred Brown, journal, 22–24 March 1838, qms-0277–0278, ATL (doc A29, p 13)
2. Alfred Brown, journal, 30 October 1838, qms-0277–0278, ATL (doc A29, p 15)
3. See deeds in doc A29(a), pp 1, 13–14. Note that the deeds are dated 30 September 1838, rather than 30 October, but this appears to be incorrect.
4. Document A29, pp 17–18
5. Alfred Brown, journal, 27 March 1939, qms-0277–0278, ATL (doc A29, pp 18–19)
6. Document A29, p 19
7. Alfred Brown, journal, 30 March 1839, qms-0277–0278, ATL (doc A29, pp 17–20)

The March 1839 deed followed the wording of the first deed, quoted above.[8] Although it was signed by 28 'chiefs of Tauranga', it appears that only three of those signatories had also signed the first deed. The boundaries of the land, as set out in the deed, encompassed the Te Papa Peninsula between the mission station and Pukehinahina, an area later found to comprise around 1300 acres. The land was purchased for goods that, according to evidence given to the 1844 Land Claims Commission, were valued at just over £100.[9]

Within two days of this transaction, groups of Maori began protesting that they had not received a share of the payment. Between March and August 1839, Brown met with various claimants, but he found their demands too 'unreasonable' to be satisfied.[10] In August, he commented:

> I wish that the business were amicably arranged. That some of the proprietors of the land received nothing when it was paid for, is certainly a hard case; but equally unjust that we should be obliged to repurchase the property because their own relatives cheated them out of some share of the original sum paid by us.[11]

After meeting with Maungatapu claimants, Brown gained five more signatures to the deed in exchange for a small extra payment, but he noted that there were still some 20 claimants from Otumoetai and Motuhoa Island who were 'unsatisfied'. There is no mention of the Te Papa land question in Brown's journal for three years after August 1839, but Maori continued to protest the purchase from time to time during the following decades. Sometimes, dissatisfied claimants fenced off parts of the CMS land or planted it in potatoes.[12] Notwithstanding such attempts to occupy or cultivate the Te Papa blocks, other Tauranga Maori continued to occupy the land with Brown's consent and even, at times, his encouragement.[13] In June 1839, he set aside a site on Te Papa for the building of a pa by 'the enquiring Natives, who are proposing to live together'.[14] Another pa, this one fortified, was also built close to the CMS settlement in 1840 by local Maori who anticipated an attack from outside the district.[15]

We do not know how the deeds were explained to Maori. Nor do we know, for sure, how representative those who participated in the transactions were of those with rights in the land, although the subsequent history of protest suggests that some of the owners did not receive payment for their interests, a point acknowledged by Brown himself. By 1839, Tauranga Maori had been in regular contact with Pakeha for a decade, but they could have had little, if any, understanding of Pakeha concepts of land sale and land ownership. Certainly,

8. Document A29, p 20
9. Ibid, pp 20–21; copies of the deeds are in A29(a), pp 1–2, 24–25
10. Document A29, pp 21–26
11. Alfred Brown, journal, 19 August 1839, qMS-0277–02778, ATL (quoted in doc A29, p 24)
12. Document A29, pp 25–29
13. Ibid, p 23
14. Alfred Brown, journal, 4 June 1839, qMS-0277–02778, ATL (doc A29, p 22)
15. Document A29, p 22, fn 41

Pakeha traders who lived in the district, and who were usually married to local women, had not attempted to buy land on the scale of the second CMS purchase. Since the CMS deeds specifically referred to the transactions being conducted with Te Paraone (Alfred Brown), it may have seemed to the vendors that the transactions were intended to 'cement their relationship with their missionary', as O'Malley has suggested.[16] In other words, the deeds were a formal expression of the kinds of arrangement Maori had been making with traders who took up residence with them. Tauranga Maori had originally wanted the missionaries to settle among them because of the benefits that they expected would flow from this association. The CMS missionaries who visited Tauranga in 1826 heard their hosts talking at night of 'the advantages that might be expected from Europeans living among them: also they proposed plans for trading with us in the most advantageous way'.[17] It is likely that the missionaries who arrived after 1835 were treated similarly. In other words, those Maori who participated in the Te Papa transactions did so in order to secure the missionary presence and its associated benefits rather than for the immediate payment alone.

8.3 The Crown Grant of Te Papa

8.3.1 Background to the Land Claims Commission inquiry

Though Brown had purchased more than 1000 acres of land for the CMS by the end of March 1839, he continued to attempt to buy more land in the Tauranga district. His journal entries for the remainder of the year show that, like other CMS missionaries such as William Williams, with whom he was in contact, Brown was increasingly worried that European speculators would buy up large parts of the country. Williams urged Brown to pre-empt speculation at Tauranga by 'buying on the behalf of CMS all the land we consider necessary for the natives'.[18] At the same time, Williams' brother Henry travelled to Port Nicholson and Wanganui, where he tried to buy Maori land and pre-empt the New Zealand Company's purchase ambitions. These kinds of activities were a reason why Captain William Hobson was sent to New Zealand to treat with Maori for the cession of sovereignty and to prohibit private dealing in Maori land. On 30 January 1840, Hobson issued a proclamation that prohibited such purchases and promised an investigation into previous land sales. This was reinforced by the Treaty of Waitangi, which reserved to the Crown a sole right of pre-emption to purchase Maori land.[19]

Following Hobson's proclamation, a land claims commission to investigate land purchases was formally established in 1840 under the New Zealand Land Claims Ordinance of that year,

16. Document A29, p 95
17. George Clarke, journal: Kerikeri to Tauranga, 23 June 1826, p 14, MS151, Tauranga Public Library (doc J2, p 56)
18. Williams to Brown, 22 June 1839, 11 November 1839, Brown papers, F50, ATL (doc A29, p 30)
19. Document A29, pp 29–35

which was enacted by the New South Wales Legislature.[20] The commissioners were instructed to make their decisions according to 'good conscience and [the] real justice of the case, without regard to legal forms and solemnities'.[21] They could recommend Crown grants for areas not exceeding 2560 acres (though the Governor in Council could award more) by comparing the amounts paid against a fixed scale of prices per acre and provided that 'proof of conveyance according to the custom of the country and in the manner deemed valid by the inhabitants' was clearly established.[22] This meant that the commissioners were to view so-called 'purchases' from the perspective of Maori customary law relating to the occupation and disposal of land. Since the chief protector of aborigines, or his nominee, was required to attend hearings of claims, the commissioners could always turn to him for advice.

8.3.2 The Land Claims Commission inquiry, 1844

Although the CMS claims to Te Papa were gazetted for hearing on 26 September 1842, they were not in fact heard by Commissioner Edward Godfrey until 1 and 2 July 1844.[23] At that hearing, the chief protector was represented by Edward Shortland, who also acted as interpreter. Shortland, the sub-protector based at Maketu, had previously been involved in mediating disputes between Tauranga Maori and their neighbours at Ongare and elsewhere (see sec 3.3). Brown appeared as witness for the CMS, submitted copies of the two deeds, and testified that the goods described in the deeds had been paid. Four Maori witnesses, Pahoro, Tamakaipi, Tare, and Te Toahaere, gave evidence in relation to the first deed concerning the 30-acre mission station site. The main witness was Tare, a signatory of the deed, who said that the persons named in it 'had a principal right to sell the land' and that 'all consented to the Sale'. Tamakaipi, another signatory, and Pahoro, spoke to similar effect, while Te Toahaere said that, although he had a right to the land, he had received no payment but had consented to give up the land to Brown.[24]

In giving evidence on the second purchase of more than 1000 acres, Brown said that the land had been purchased from the chief Reretuwhenua and others, who had received the payment specified in the deed when it was signed. But Brown's journal records a different sequence of events, as O'Malley pointed out: some signatures were obtained several months before payment was made, while some additional signatures were obtained and payments

20. The original basis for the New Zealand Land Claims Ordinance 1840 was the New South Wales Court of Claims Act 1833. After New Zealand was declared a separate colony, the Legislative Council passed its own replica of the ordinance in 1841.

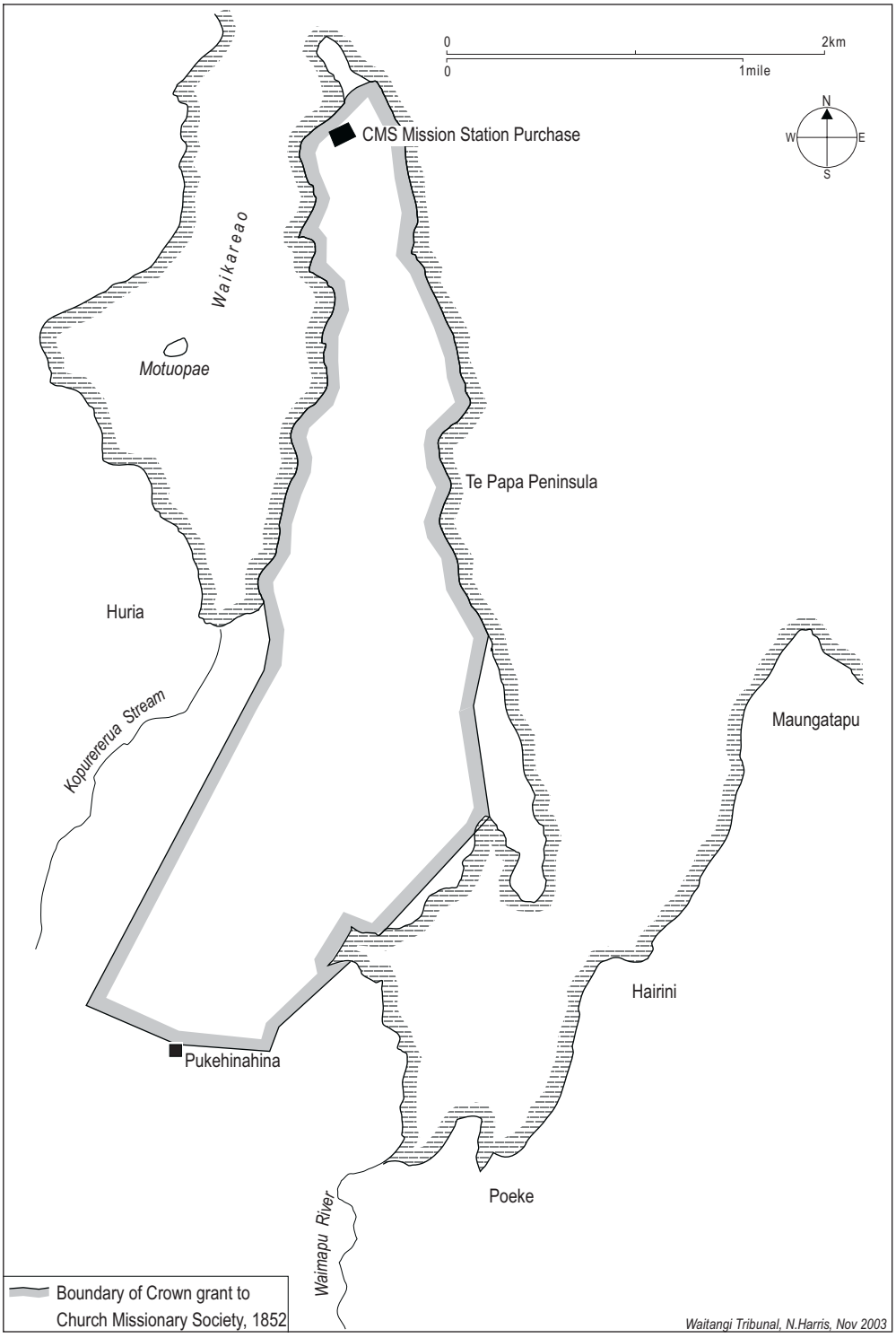
21. Document A29, p 37

22. D A Armstrong, 'The Land Claims Commission Practice and Procedure, 1840–1845' (Wai 45 ROI, doc I4), passim (doc A23, p 37)

23. See 'Report of the Commissioners Appointed to Examine and Report upon Claims to Grants of Land in New Zealand, Claim No 444C', OLC689–690 (doc A43(a), pp 1–23)

24. See doc A29, pp 38–40

8.3.2



Map 15: CMS Crown grant boundaries

made after the nominal transfer of the land on 30 March 1839. This version of the transaction accords with what was said by Tamakaipi and Pahoro, who affirmed that signatures were affixed to the deed some time before payment was made. Another Maori witness, Haurangi, confirmed that Brown had made subsequent payments to disgruntled claimants who had missed out on the initial payment. Two other disaffected witnesses, Raniera and Hahaia, complained that they and their parents had received no payments and they spoke against the CMS claims to the land.[25] Godfrey dismissed such opposition, saying that:

> Some Natives have objected that they did not receive a share of the payment for this Land – but, they appear to have been very young persons at the period of Sale; and their profession of any immediate interest in it [is] very questionable; The principals of the Tribe (Reretuwhenaua [*sic*] & Ngapipi) having undertaken to divide the payment, it is presumed that they did not omit satisfying every one whom they considered as a holder of any legitimate right in the Land.

Godfrey further justified his dismissal of those opposed to the CMS claims by stating that the society had been 'for five years in undisturbed possession of this land'.[26]

Godfrey calculated the approximate value of the goods used in the second CMS transaction to be £285. This figure was established by estimating the value that the goods would fetch in Sydney and multiplying that by three, as was the commission's practice. Thus, on the basis that the area concerned was 1030 acres, the price per acre was approximately five shillings eightpence, which was within the range deemed to be acceptable by the commission.[27]

Satisfied with Brown's version of the transactions, Godfrey recommended that the CMS receive Crown grants for the whole area described in the two deeds. In their research overview for the Tauranga inquiry, O'Malley and Professor Alan Ward concluded that Godfrey's investigation of the CMS claims was 'at best perfunctory and at worst papered over obvious inconsistencies in the evidence presented'.[28] In his subsequent Te Papa report, O'Malley concluded that:

> even when Maori witnesses did dispute the bona fides of the transaction and contradicted the evidence of Brown on crucial points their evidence was essentially ignored. It is difficult to escape the conclusion that Godfrey bent over backwards to ensure a favourable recommendation for the CMS with respect to its Te Papa purchases.[29]

We comment further on these views below, after considering the submissions from counsel on the issue.

25. Document A29, pp 38–41
26. Armstrong, p 143 (doc A29, p 42)
27. Document A29, p 41
28. Document A13, p 23
29. Document A29, p 43

8.3.3 Survey and issue of Crown grant

Godfrey's recommendations were forwarded to Governor FitzRoy at the end of August 1844. FitzRoy confirmed the recommendations and ordered deeds of grant to be prepared. Although the land described in the CMS deeds had not yet been surveyed, it was common practice at the time to issue grants without a survey having been carried out. According to O'Malley, the file of documents relating to the Land Claim Commission's investigation of the CMS claims does not indicate whether the deeds were prepared before November 1845, when Grey replaced FitzRoy as Governor, but certainly they had not been issued by then. Grey stopped the issuing of Crown grants in advance of a survey being done, and the CMS claims at Te Papa were eventually surveyed by George Ormsby in 1851. The survey revealed that the two claims amounted to 1333 acres, not the 1030 acres estimated before the Land Claims Commission. On 27 July 1852, Lieutenant-Governor Wynyard issued a Crown grant to the CMS for the larger area, although a road running from the mission station to Pukehinahina, which lay outside the southern boundary of the block, was reserved for the Crown. The grant specified that the land was to be held 'in Trust for the said Society for ever'.[30]

8.4 Claimant and Crown Submissions on the Crown Grant of Te Papa

8.4.1 Claimant submissions

The joint closing submission made by counsel for 11 of the Tauranga claimant groups focused on three broad areas: Brown's two pre-Treaty transactions of 1838 and 1839; the Land Claims Commission's investigation of 1844; and Te Papa's subsequent acquisition by the Crown. The CMS purchases were discussed in the context of two previous Tribunal reports that considered similar pre-1840 purchases: the *Ngati Rangiteaorere Claim Report 1990* and the *Muriwhenua Land Report* (1997). Both reports, counsel argued, concluded that deeds provided by European purchasers and drawn up according to English property law and conveyancing practices were understood by Maori not to convey an outright sale of their land but merely to give a qualified right of occupation, according to custom. In the Maori translations of the deeds, certain Maori words – in particular, 'tuku', 'hoko', and 'hoatu' – were used to serve new purposes and were equated with English contractual concepts such as sale.[31] Claimant counsel argued that the Te Papa deeds, which used the words 'ka tuku ka hoko' to denote an unconditional sale, should be regarded in the same way. Counsel quoted O'Malley's reminder that Tauranga Maori had had 'relatively little contact with Europeans and even less experience of Pakeha concepts of selling land'.[32] The claimants' submissions on

30. Document A29, p 45
31. Document N11, pp 48–50
32. Document A29, p 94

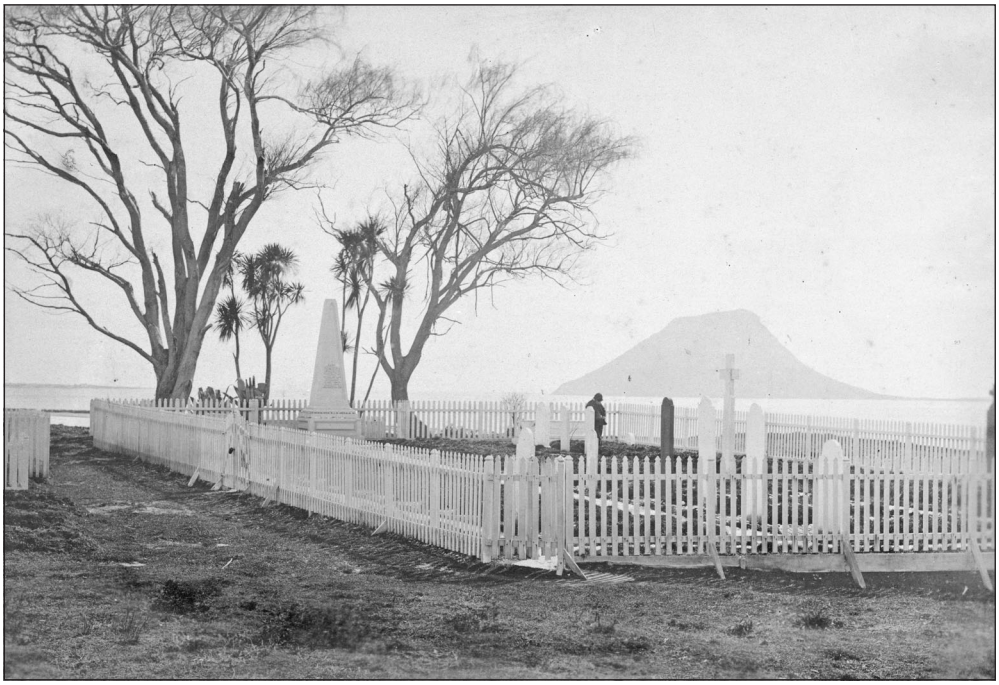


Fig 10: Cemetery, Te Papa. Photograph by John Kinder.
Reproduced courtesy of the Alexander Turnbull Library (PAColl 7806-3).

the Land Claims Commission's investigation also referred to the *Muriwhenua Land Report*, citing its criticism of the Land Claims Ordinance 1841 and its alleged failure to properly account for Maori customary law in evaluating land claims.[33]

The joint submission drew attention to what it described as 'clear evidence of a disorganised and chaotic method of payment and the fact that some "vendors" never received any payment'.[34] As a consequence, protests were still being made as late as 1867, when the CMS finally gifted four-fifths of its grant to the Crown. The joint closing submission provided a chronology of 16 protests, drawn from O'Malley's report. Claimant counsel concluded that 'Maori protest to the Te Papa block purchases was unyielding and vast . . . many Tauranga Maori did not accept that the so-called vendors had exclusive rights to Te Papa'.[35] Counsel then listed criticisms of the commission's inquiry and findings which were taken from the research reports by O'Malley and others. These included:

- the absence in the records of what the Maori witnesses had to say in Maori, as opposed to English translations by Pakeha officials such as sub-protector Shortland;
- a conflict of evidence between Brown and the Maori witnesses, and Godfrey's willingness to accept Brown's version;

33. Document N11, p 53
34. Ibid, p 50
35. Ibid, pp 51–52

- evidence that payments were chaotically distributed and that some witnesses did not receive any payment;
- evidence of considerable protest, though Brown dismissed this at the hearing as 'frivolous and vexatious';
- the grant to the CMS of the surveyed area of 1333 acres, far more than was ever required for mission purposes, and although only 1030 acres had been estimated and approved by Godfrey;
- that the mutiplier used for valuing the goods paid for the land, based on Sydney prices, 'worked against the vendors'; and
- the failure to reserve the historic wahi tapu site of Otamataha.[36]

Though other counsel made submissions on the CMS purchases, only one, counsel for Ngai Tamarawaho, raised additional concerns. She identified Ngai Tamarawaho's ancestral interests in the Te Papa–Waikareao–Otumoetai area, noted the contact several of their chiefs had with Brown and his mission station, and identified their chief, Matiu Taho, as being a signatory to both of the CMS deeds. Another Ngai Tamarawaho signatory of Brown's second deed was Te Kaponga, though the important chief Peka (Baker), who negotiated with Brown on this transaction, did not sign. Counsel also referred to the *Muriwhenua Land Report*'s discussion of the terminology used in pre-1840 land transactions. She concluded, in line with the report, that it was 'highly doubtful' that 'ka tuku ka hoko' equated with 'the English notion of sale'.[37] Counsel also adopted O'Malley's conclusion that the Te Papa deeds were viewed as 'something less than unconditional alienations of full and exclusive rights over the Te Papa block'.[38] Her 'irresistable conclusion' was that 'Maori did not intend to give up all their rights in the land'. This was demonstrated by the fact that Maori continued to use Te Papa after the deeds were signed (a situation similar to that which pertained after the CMS 'purchase' of the Te Ngae mission at Rotorua).[39] Counsel for Ngai Tamarawaho concluded that the Crown breached its Treaty obligations actively to protect Maori land and to respect Maori tino rangatiratanga by failing to make proper inquiry into the CMS transactions at Te Papa and by failing to protect Maori interests in the land.

In their joint submission in reply, counsel criticised the Crown's failure to present expert evidence. They questioned any assumption that Tauranga Maori could have had direct knowledge of land transactions in other districts.[40] Counsel for Ngai Tamarawaho concluded her submission in reply by saying that, until the CMS was awarded a Crown grant in accordance with Godfrey's recommendation, the Te Papa land was held by the CMS on the basis of customary law.[41]

36. Document N11, pp 54–55
37. Document N23, p 12
38. Document A29, p 93
39. Document N23, p 13
40. Document P8, pp 47–50
41. Document P6, p 10

8.4.2 Crown submissions

In its closing submissions, the Crown accepted that, by moving into a new area such as Tauranga, 'missionaries were often subject to the kind of "testing-out" that had been common in the early days of the CMS in New Zealand . . . This sort of gamesmanship initially plagued trading transactions and the problems flowed into the purchasing of land.' As a result, it was 'not surprising that the Te Papa purchases involved some complications'. But, having acknowledged this, Crown counsel stated that both claimant counsel and claimant witnesses had overemphasised the inexperience of Tauranga Maori in dealing with Europeans. Counsel added, by way of example, that 'some Maori of Tauranga probably had direct acquaintance of . . . the Bay of Islands, including the long established and – by the later 1830s – burgeoning trade in land [there]', because they had been taken there as slaves by Ngapuhi in the 1820s.[42] Crown counsel also submitted that the evidence available relating to the CMS purchase of the nearby Matamata mission station site showed that the remoteness of the area was not a barrier to Maori understanding such purchases in non-customary terms. According to the Crown's submission, Te Waharoa's negotiations with the missionaries at Matamata made it clear that he did not perceive that payments would continue beyond the intitial price agreed to.[43]

Crown counsel also discussed the texts and meanings of the two CMS deeds. They submitted that the Muriwhenua land Tribunal did not resolve the conflict in the linguists' expert testimony since it had not undertaken 'detailed analysis' and had instead relied on 'the wider context of the transactions'.[44] Nor had O'Malley resolved the conflict in relation to Tauranga since, Crown counsel argued, he confined himself to 'basic observations', submitted no supporting evidence, and admitted the need for expert evidence. Counsel added that 'the surrounding context of the Te Papa transactions, and their later confirmation by Commissioner Godfrey, cannot be deduced from the cited passages in the Muriwhenua report'. The Crown concluded that:

> the Muriwhenua findings are not to be applied as some kind of binding precedent that obviates the need to consider all sources relevant to the transactions in this inquiry. There were clearly features that demonstrate that the sales, their confirmation and the use of the land lifts the transactions out of a purely customary framework.[45]

Crown counsel also argued that it was unnecessary to provide reserves at Te Papa since Tauranga Maori retained their adjoining land. The CMS purchase of more land than was required for the mission was defended on the ground that local churches were supposed to become self-supporting, and thus the mission planned to introduce an industrial school with an associated farming operation.[46] On the question of continuing objections and additional

42. Document 02, pp 101–102
43. Ibid, p 102
44. Ibid, p 106
45. Ibid, pp 107–108
46. Ibid, pp 109–110

payments, the Crown argued that these were few and were generally settled by Brown by negotiation. The only substantial row, the Crown argued, concerned the distribution of payments for the larger block, which Brown necessarily left to the leading claimants. After the commissioner's investigation, the Crown said, there was little protest.[47]

Lastly, Crown counsel commented on the Land Claims Commission's investigation. They concluded that Godfrey 'usually placed great weight on Maori testimony' and that his refusal to consider the testimony of the young men Raniera and Hahaia was reasonable because they were absent at the Bay of Islands at the time of the purchase.[48] Crown counsel explained away contradictions in Brown's evidence – including his claim to have been in undisputed possession of the blocks for five years – by arguing that Brown made later payments because other claimants wanted to participate in the transaction.

8.5 Treaty Findings

Although we need to make findings on the CMS purchases and Crown grant, we are hindered by the one-sided nature of the documentary evidence that is available. All of the documents were written by Europeans, some of whom, such as Brown, had a vested interest in the outcome of the CMS claim to Te Papa. The material recorded by Godfrey's commission as Maori evidence was only a summary in English of what the interpreter, Shortland, believed the witnesses had said. As claimant counsel noted in their joint submission, there is no verbatim record of what the Maori witnesses said, and therefore no way that we can test the accuracy of Shortland's translations.[49]

We do not need to doubt Brown's commitment to the welfare of his flock, as he saw it. However, there are clear differences, as O'Malley noted, between Brown's public stance over his purchases, as he described them to Godfrey, and the private record of daily activities that he kept in his diary. Many of the Maori witnesses' statements accorded with information Brown recorded in his diary, yet Godfrey dismissed these statements as frivolous and instead accepted Brown's evidence. This led us to doubt whether we, like Godfrey, should accept at face value Brown's statements as being a true account of what happened.

Both Crown and claimant submissions noted that Maori understandings of pre-1840 purchases were an issue that was reported on by the Tribunal in its *Muriwhenua Land Report*.[50] We agree with the Crown's assertion that the findings of one Tribunal on a particular issue in a particular inquiry cannot be appropriated directly into the circumstances under inquiry by a different Tribunal. However, we have examined the findings of the Muriwhenua Tribunal

47. Document O2, pp 110–111
48. Ibid, pp 111–112
49. Document N11, pp 54–55
50. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 53–180

and have found them to be of relevance to the question of the CMS purchase and the issuing of the Crown grant for the Te Papa blocks at Tauranga. The approach of the Muriwhenua Tribunal in relying on the wider historical context to interpret the linguistic evidence of pre-1840 transactions is one we follow here. A detailed understanding of the semantics of these early land purchase deeds is impossible without a consideration of the broader historical context within which the transactions took place. The Muriwhenua Tribunal adduced an array of evidence to show that the Maori 'vendors' understood the transactions within a customary framework that included: the continued Maori occupation of land 'sold' to missionaries; expectations that continuing benefits would arise from allowing missionaries to occupy Maori land; and the emphasis on the personal relationship with the missionary involved in the transaction. These are all circumstances of relevance to the Tauranga CMS transactions.

Brown's own understanding of the Te Papa transactions (as recorded in his dairy, if not as explained to Godfrey) seems to equate more with the kind of customary understandings of pre-Treaty transactions identified by the Muriwhenua Tribunal than with a transaction that took place outside of a customary framework, as was argued by the Crown in this inquiry. In his diary, Brown noted the necessity of demonstrating his commitment to local Maori through a deal involving the land he was living on. The deed recording the transaction emphasised its personal nature by acknowledging that the land was 'let go' to Brown, even if it was to be 'owned' by the CMS. And, after the 'sale' was completed, Brown actively encouraged some Tauranga Maori to live on the land.

Each side misread the acts and intentions of the other in pre-Treaty transactions in the Bay of Plenty and Muriwhenua alike. The scramble for a share of the payments at Tauranga (and in many of the Muriwhenua CMS purchases) occurred, from a Maori point of view, because the missionaries failed to allocate the goods in the customary manner according to the rank of the 'vendors' and the relative interests that they held in the block.[51] For Brown and other CMS missionaries, this scramble and the ensuing complaints from those aggrieved by the allocation process were caused by a failure by Maori to agree amongst themselves on the division of payments and by some Maori being 'cheated out of their payment by their friends'.[52]

Similarly, 'purchasers' and 'vendors' read different meanings into the texts of the deeds that recorded the CMS transactions. Documents that attempt to record cross-cultural encounters are fraught with the potential for divergent readings by contending parties, as we have been reminded in linguists' scholarly examinations of the two texts of the Treaty of Waitangi. What has been said of the meanings of the Treaty can be said also of the deeds recording old land purchases, including those used by the CMS, which were drawn up by the purchasers and used the language of English conveyancing law. Such deeds talk of the 'sale' of land by Maori vendors being 'for ever'. Translations into Maori made by the missionary purchasers used those Maori words, such as 'tuku' and 'hoko', that in the minds of the missionaries most nearly

51. Ibid, pp 59, 63–64
52. Alfred Brown, journal, 20 August 1839, qms-0277–0278, ATL (doc A29, p 25)

equated with the English concept of a full and final sale. The Muriwhenua Tribunal found it highly unlikely that Maori in the 1830s, in parts of the country less isolated from Europeans than Tauranga, would equate a phrase such as 'Ka tuku ka hoko' with the European concept of 'let go of and sell'. The Ngati Rangiteaorere Tribunal came to a similar conclusion when it considered the CMS purchase of land at Te Ngae near Rotorua in 1839. This transaction took place in the same year as the second CMS Te Papa transaction, and in an area of the Bay of Plenty where Maori had as little familiarity with European purchase transactions as those in Tauranga. According to the Ngati Rangiteaorere Tribunal, the behaviour of Maori after the Te Ngae deed was signed was 'consistent with a more limited transaction than outright sale – something like a conditional lease or right of occupation'.[53]

Owing to the absence of the Maori voice from the historical record, it is difficult for us to conclude what, exactly, words such as 'tuku' and 'hoko' meant to Tauranga Maori in 1839. The CMS Te Papa deeds were signed (or, more usually, marked with a tohu) by Maori who could neither read nor write, even in their own language. Their understanding of the deeds therefore depended on what Brown or his interpreter said they meant. Though Brown told the commission that he had fully explained the deeds to the Maori vendors, it is our view that Maori understandings of the transactions in an isolated locality such as Tauranga were likely to be conditioned by their customary practice of allowing strangers to occupy their land. We note that in Maori customary land law there could be no such thing as a full and final sale, only a conditional allowance of occupation rights. Words such as 'tuku' and 'hoko' would have signified concepts that made sense within this conceptual framework, and we reject any notion that Tauranga Maori would have been in a position to add to these concepts the radically divergent ones of English land conveyancing, imported directly from an alien cultural paradigm. In any case, English law did not apply in New Zealand at the time. We conclude that the CMS deeds were neither valid in English law nor an accurate record of the transactions in Maori law.

The Crown argued that Tauranga Maori would have been familiar with non-customary notions of land transactions owing to the fact that some of them had formerly been slaves of Ngapuhi in the Bay of Islands. We doubt that slaves in the Bay of Islands in the 1820s and 1830s would have been in a position to acquaint themselves with European notions of land law. In any case, we have no evidence that any of the Maori who participated in the Tauranga CMS transactions had been former slaves of Ngapuhi. The Crown's submission referred to two Tauranga Maori who were in the Bay of Islands at the time of the transactions, but they did not participate in the negotiations. The key players in the transactions – persons such as Peka, Reretuwhenua, Tare, Tamakaipi, Tahu, and Kape – were rangatira whose mana over the Te Papa lands seemed to be intact in the late 1830s; none of them showed any appearance of being former slaves.

53. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report 1990*, 2nd ed (Wellington: GP Publications, 1996), p 15

We also reject the Crown's contention that the purchase of the nearby Matamata CMS mission station showed an understanding of the transaction on the part of Maori that was in any way inconsistent with a customary understanding of land use. Te Waharoa, the principal Ngati Haua negotiator, reportedly told the missionaries involved that the goods used by the CMS as payment 'will soon be broken, worn out and gone, but the ground will endure forever to supply our children and theirs'.[54] This suggests that the initial 'payment' was seen as a gift to mark the use-rights being given to the missionaries but that, in keeping with custom, Te Waharoa expected that Ngati Haua would also be able to continue to occupy and use the land. At the very least, it indicates that Te Waharoa expected that an ongoing mutually beneficial relationship was envisaged.

The claimants raised the issue of the size of the Crown grant, including the awarding to the CMS of the additional 303 acres revealed on survey. Such a large block of land was not necessary for Brown's mission station alone. As we noted above, Brown negotiated for the larger area, then thought to be 1000 acres, on the assumption that he was saving it for Maori from the clutches of European speculators. Although Brown's further intentions for the land at that time are not clear, the CMS later resisted the Crown's attempt to acquire the block, saying that it intended to use the land for an industrial school and for training Maori in agriculture. Godfrey made no reference to any trusteeship role on the part of the CMS when he recommended that a Crown grant be issued in its favour for the whole block.

The failure of the Crown to ensure that reserves were set aside within the CMS purchases probably did not impact on Tauranga Maori adversely, since many were allowed to continue in the occupancy of the land, at least until 1867. We also do not consider that the Crown needed to ensure the reservation of wahi tapu sites inside the boundaries of the CMS blocks. The Otamataha site had previously been entrusted to Brown's guardianship (see sec 3.2.1) and this does not seem to have been disputed at the 1844 Land Claims Commission inquiry. The fate of this land after 1867 is discussed at section 8.4.3.

Claimant counsel submitted that the way in which the value of the goods used in the CMS transactions was determined during Godfrey's inquiry was defective. However, we consider that the multiplier used by Godfrey in his calculations is of limited relevance to the legitimacy of the commission's findings. To our understanding, the goods were not accepted by Maori in terms of a full and final payment. Godfrey's opinion that they had been and his failure to account for Maori evidence to the contrary were the problematic features of his inquiry. The means Godfrey used to calculate the value of the goods mattered little once he had decided to conduct his inquiry without sufficient reference to Maori customary practice.

The claimants argued that the Crown, in issuing a grant to the CMS, failed to observe the principle of active protection. This principle was first enunciated in Normanby's instructions to Hobson as a need to protect Maori from the spoliation usually arising from European

54. J A Wilson, *Missionary Life and Work in New Zealand 1833–1862: Being the Private Journal of the Later Rev John Alexander Wilson*, edited by C J Wilson (Auckland: Star Office, 1889), pp 20–21

colonisation. It was spelled out more specifically in the preamble to the Treaty, and in articles 2 and 3. The Crown's obligation to protect Maori rights to land applied equally to its investigation and granting of land transacted prior to the signing of the Treaty. Before the Crown could award European claimants Crown grants, it had to investigate whether the land had been fully and fairly purchased. This was made clear in proclamations by Gipps and then Hobson in January 1840, and in the Land Claims Ordinance of 1841. Godfrey's inquiry into the CMS Te Papa claims was carried out under this legislation.

The question at issue, therefore, is how well Godfrey carried out the Crown's protective obligation in deciding to endorse the CMS claims in full. Godfrey was instructed to consider the transactions according to customary rules relating to land tenure. He did not do so, and instead simply accepted Brown's argument that he had 'purchased' the land fully and finally, and that the two Te Papa deeds should be treated as proper transactions under English land law. Despite it being supported by statements in Brown's private journal, Godfrey ignored evidence from Maori witnesses that additional payments were later made both to claimants left out of the original transactions and to buy off others who continued to assert rights of occupation.

In light of these conclusions, we find that Godfrey failed to ascertain and acknowledge the conditional nature of the transactions under Maori customary law and that he wrongly concluded that the CMS had fully and fairly purchased the whole of the area. The Crown, in accepting Godfrey's recommendation and finally awarding the CMS a Crown grant for the whole area, was therefore in breach of the Treaty principle of active protection.

8.6 The Crown's Acquisition of Te Papa, 1867

8.6.1 Military occupation of Te Papa

The arrival of troops in Tauranga in January 1864 had far-reaching consequences, not only for Maori but also for the CMS mission. Though Brown remained in his house, the military took possession of the mission land, erecting bell tents for the soldiers and constructing two redoubts. The CMS land committee arranged for the Crown to lease the land, save some that was already leased to a local settler, Samuel Clarke.[55] In the aftermath of the battle of Pukehinahina, Te Papa was selected as the site for a military township, and a sketch plan attached to a ministerial minute of 6 June 1864 shows a 'Militia Township' there extending as far south as Pukehinahina. By 4 July, surveyors had begun to lay out town sections, even though the land still belonged to the CMS, and a month later Brown protested that the military had taken possession of Te Papa without the agreement of the society.[56] When news of this reached the CMS's parent committee in London, the lay secretary wrote back opposing any alienation of

55. Document A29, pp 59, 62
56. Document M9, pp 113–114

the Tauranga property on the ground that Maori had given the land to the CMS to hold as 'a Trust for their benefit'.[57]

8.6.2 Negotiations for Government acquisition

In January 1865, Burrows, the secretary of the CMS's land committee in New Zealand, wrote to the society's parent committee advising them that the Government would require at least part of the CMS's land at Tauranga for public purposes. When the Government applied for the land, Burrows considered that it would be preferable to negotiate the best terms possible rather than to have the land taken under the New Zealand Settlements Act 1863.[58] In response, the parent committee stated that, 'while upholding the principle of retaining their land as a sacred trust for the native race,' it was prepared to 'yield in this instance to the pressure of Government' if William Williams and Brown thought it expedient.[59] Notwithstanding this, the CMS remained firm in its belief that the land:

> was acquired & is retained under a solemn Trust that it should be applied to the benefit of the Native race & Church & that it should never be bartered or sold for the mere purpose of raising money. The Natives who gave the land for the benefit of themselves & their posterity would have just ground of complaint against us if we sold that land for a Military Settlement.[60]

Here the matter appears to have rested until February 1866, when Hugh Carleton, the Auckland provincial secretary, wrote to Burrows informing him that confiscated lands in Auckland province were to be transferred to the provincial government.[61] Accordingly, Burrows was asked to inform the provincial government of any CMS lands within the confiscated districts that the society wanted to be returned, and what compensation it sought for the lands to be retained by the Government.[62] It seems to have been assumed at this time that the CMS lands were subject to confiscation because they were inside the geographical boundaries of the district described in the 1865 Order in Council. This assumption was incorrect because in Tauranga, unlike in other confiscated districts, the land that was confiscated was further described as land belonging to 'the tribe "Ngaiterangi"'. That additional description excluded land owned by the CMS under Crown grant, but it appears that it was not until late 1866 that the Government realised this and sought to overcome the problems it posed.[63]

57. Venn to Williams, 26 November 1864, Williams family papers, F45, ATL (doc A29, pp 71–72)
58. Document A29, pp 74–76
59. Venn to Williams, 26 May 1865, Williams family papers, F45, ATL (doc A29, pp 76–77)
60. Venn to Gomperts, 1 September 1865, CMS home letterbook, 1864–1866, CH/L16, micro-MS-coll-04–067, ATL (doc A29, p 81)
61. Before the end of 1866, this decision was reversed and the administration of the confiscated lands was returned to the Government: see doc A29, p 82.
62. Document A29, p 82
63. Ibid, pp 88–90

In reply to Carleton's letter, Burrows proposed that the CMS should retain five acres of the original mission site and buildings, plus one-fifth of the 1333 acres, 'this quantity to be fairly distributed in Town and Suburban Sections . . . over the whole block'. The remaining four-fifths would be given to the Government without any requirement that the society be compensated. The Government would, however, be required to compensate Clarke for the early termination of his lease.[64] It is hardly surprising that the provincial government accepted this generous offer. On the other hand, it is surprising that it was approved by the CMS's parent committee in light of the 'solemn Trust' mentioned above, whereby the land was to be used 'to the benefit of the Native race & Church'. But the parent committee was content with the 'good bargain' that had been made, since it anticipated that 'an abundant endowment fund' would be obtained from the sale of the remaining one-fifth of the original grant.[65] The problem remained that, according to the CMS's Crown grant, the land was supposed to be held in trust for the society 'for ever'. According to Whitaker, then the superintendent of Auckland province, this meant that the trustees of the CMS property had no power to dispose of the land.[66] In spite of this, a deed of conveyance from the CMS trustees to the Crown was executed in September 1867 covering the 1333 acres of the Te Papa block, less some 247 acres in 42 blocks to be retained by the CMS and held under its 1852 Crown grant.[67] It is not clear how the legal obstacles were overcome – or if they were overcome at all. An Act validating the vesting of the Te Papa land in the Crown appears to have been drafted but not introduced to Parliament.[68]

8.6.3 The fate of the CMS Te Papa lots

By the 1880s, much of the CMS land at Te Papa had been sold, although it is unclear, according to O'Malley, whether the money raised from these sales was used as an endowment fund for the benefit of Maori.[69] In 1882, the CMS decided to transfer the ownership of its remaining mission land to the New Zealand Mission Trust Board, whose trust deed specified that its income was to be applied 'for the spiritual benefit of the Maori population' of the North Island.[70] It seems that income from the trust board's Tauranga land was used for the maintenance of CMS buildings at Te Papa, for salaries, for the payment of Maori preachers, and for educational purposes.

64. Burrows to superintendent, 5 March 1866, IA15/10, ArchNZ (doc A29, pp 83–84)
65. Document A29, pp 84–87
66. Ibid, pp 89–90
67. Ibid, p 91
68. Document A29(a), pp 331–336
69. Document A29, p 92
70. 'The Trust Deed of the New Zealand Mission Trust Board', 13 June 1889 (doc H1(b), sec BL1). The terms of the deed were altered in 1950, but income was still to be applied 'for the spiritual benefit and spiritual instruction of the Maori people of the North Island': doc H1(b), sec BL2.

By the late twentieth century, only one piece of land remained in the ownership of the mission trust board. Local Maori sought the return of this property at Dive Crescent, which is part of the historic Otamataha Pa site, and in 1996 the trust board agreed to replace the existing trustees with representatives of Ngati Tapu and Ngai Tamarawaho.[71]

8.7 Claimant and Crown Submissions on the Crown's Acquisition of Te Papa

8.7.1 Claimant submissions

In their joint submission, claimant counsel argued that the Crown, in acquiring four-fifths of the Te Papa blocks, 'rode roughshod over any trust which existed between the CMS and local Maori'. They further alleged that, by failing 'to take cognisance of that trust', the Crown had failed actively to protect the interests of Tauranga Maori.[72]

Counsel for Ngai Tamarawaho argued this point more specifically:

> In pressuring the CMS into ceding four-fifths of the land to the Crown, the Crown was knowingly inducing a breach of trust. The land was acquired for the purposes of the Mission; the stated objective of the CMS being that it would hold the land for the benefit of Maori, whether in the fulfilment of religious or educational objectives or otherwise. The precise terms of the Trust are not so clear, the Crown grant simply stated that the trustees held the land on trust '*for the said Society for ever*'. Under the terms of the trust, it was therefore not open to them to dispose of the land . . . In insisting that the land be conveyed notwithstanding the breach of trust, the Crown displayed scant regard for the rights of the beneficiaries . . . although the Crown had a duty actively to protect Maori land, it insisted on obtaining the Te Papa land when it had already confiscated the entire surrounding district and proposed retaining the 50,000 acre block. [Emphasis in original.][73]

In the joint submission in reply, counsel acknowledged that the stated beneficiary of the trust for the Te Papa blocks was not Maori but the CMS. However, counsel submitted, 'there are clearly articulated comments by CMS officials that the acquisition of Te Papa was on trust for the benefit of Tauranga Maori'. In light of these statements, it was submitted that a trust 'akin to a constructive trust' (that is, one which is not stated explicitly but which could be derived by inference) existed in favour of Tauranga Maori.[74] An additional argument advanced by counsel for Ngai Tamarawaho was that, 'in terms of their customary law', Maori had not relinquished their interest in the land and thus local Maori with customary interests in that land should have been the beneficiaries. Counsel submitted that, 'Even if, technically,

71. Document K5, pp 33–34, 37–38
72. Document N11, p 59
73. Document N23, p 15; see also doc N11, pp 56–59
74. Document P8, p 51

the beneficiary of the trust was the CMS, it is clear that the CMS was holding the land for the benefit of local Maori and the Crown knew this.'[75]

8.7.2 Crown submissions

Crown counsel submitted that the Te Papa block was held in trust for the CMS, not for Maori directly. While conceding that the main object of the CMS was the 'evangelisation of native peoples, including Maori', Crown counsel submitted that this did not mean that the CMS held land in trust for particular Maori. The CMS was not required to use its lands for the benefit of local Maori and could use them 'to further the wider objects of the mission and the Native church'. Counsel also raised the question of 'whether the loss of four fifths of the Te Papa blocks significantly impaired the work of the mission'. Once the CMS accepted the need to compromise in the face of the Government's decision to locate the township at Te Papa, the terms of the transfer were proposed by the society itself. Counsel speculated that one-fifth of the block, located in the midst of an organised settlement, probably appeared a 'fair exchange for the original estate, much of which was in [Samuel] Clarke's possession'. In conclusion, Crown counsel submitted that the trust to which Te Papa was subject was 'broadly directed at the CMS effort in New Zealand. In light of changing circumstances, the society did not regard this as precluding the diminution or rationalisation of an estate such as Te Papa.'[76]

8.8 Treaty Findings

We accept that the strictly legal beneficiary of the trust was the CMS, not Tauranga Maori. The land had already been permanently alienated from its Maori owners through the Crown action of granting the land to the CMS, an action which we have found was in breach of Treaty principles. In a narrowly legal sense, then, Maori had no remaining rights in the Te Papa block, and the CMS was free to use the land for whatever purposes it wished.

Notwithstanding this conclusion, the statements of CMS officials quoted above show clearly that the CMS intended that its lands in New Zealand, particularly those in Te Papa, were to be used for the benefit of Maori. It is also apparent from an 1865 return of grants or endowments for the benefit of Maori that Crown officials took a similar view. This return, prepared by Alfred Domett, the Secretary for Crown Lands, listed the CMS mission at Tauranga under the heading 'Endowments for the Benefit of Native Subjects of Her Majesty'. With the return was a schedule of land, which, according to its explanatory note, included 'Grants for Mission Stations and missionary objects, *which are obviously Grants for the benefit of the Natives*

75. Document P6, p 11
76. Document O2, pp 103–106

almost exclusively, although they are not expressly mentioned therein' (emphasis added).[77] We therefore consider that, at the time the land was acquired by the Crown, both the CMS and the Crown clearly understood that Te Papa was land held in trust solely, or 'almost exclusively', for the benefit of Maori. We conclude that, while Tauranga Maori were not, strictly speaking, the beneficial owners of the CMS land at Te Papa, the Crown's acquisition of CMS land without making satisfactory provision for the beneficial exercise of an implied trust for them was in breach of its Treaty obligations to act in good faith towards Maori, and actively to protect their interests.

The Crown's obligations must also be understood in light of our discussion of the original CMS transactions and the Land Claims Commission inquiry. In our view, the Maori who signed the CMS deeds could have intended to allow the CMS missionaries only conditional rights of occupation. They would also have had a reasonable expectation of continuing benefits from the use of the land by the CMS. We have already found that the Crown breached the Treaty by awarding the CMS a Crown grant for the whole area. Furthermore, there is evidence that Tauranga Maori continued to assert their interests in the Te Papa block until as late as 1867, when the land was transferred to the Crown. We therefore consider that the Crown's obligations of active protection and to act in good faith had particular force in this case, where Tauranga Maori never willingly surrendered all their customary rights to Te Papa.

8.9 Chapter Summary

The main points in this chapter are as follows:

- Tauranga Maori understood the 1838 and 1839 CMS acquisition of the Te Papa lands within the framework of customary land 'transactions'; it was not a full and final 'sale' in the European sense of the word.
- The Crown breached the Treaty principle of active protection by Crown-granting the land to the CMS without acknowledging the customary and conditional nature of the society's acquisition.
- The Crown acquired the Te Papa lands without accounting for the implied trust, which it was aware of. According to the Crown's own records, the land was held in trust for the benefit of Maori. In ignoring the trustee role the CMS had in holding the land, the Crown further breached the principle of active protection.

CHAPTER 9

RAUPATU ENFORCED

9.1 Introduction

In chapter 6, we examined the policy of confiscation and the legal mechanisms by which it was applied in Tauranga. In this chapter, we are concerned with how the raupatu was implemented and enforced. We begin by discussing the introduction of the Pai Marire religion to Tauranga. The new religion played an important role as a unifying force among those Maori who actively opposed confiscation, although it seems that only a minority of Tauranga Maori remained believers in Pai Marire in the longer term. Then, we discuss how the Crown decided on the location of the 50,000-acre block of confiscated land that it was to retain, and the surveying of this block. The survey led to resistance from some Tauranga Maori associated with the Pai Marire and King movements, which remained peaceful until early in 1867, when fighting broke out. From late January until early March 1867, a small-scale conflict known as the 'bush campaign' was fought between Crown forces and a section of Tauranga Maori based in inland kainga. When the fighting was over, Tauranga settled into an uneasy peace. The way was cleared for Pakeha settlement, as well as for the process of returning some of the confiscated land to Maori. We discuss this matter in chapter 10.

9.2 Pai Marire

The Pai Marire (goodness and peace) or Hauhau movement originated in Taranaki in 1862, when Te Ua Haumene had a vision of the angel Gabriel.[1] Te Ua developed a theology based on the Bible that identified Maori with the Jews and New Zealand as the land of Canaan. There was a strong millenarian strain in Pai Marire: a belief that divine intervention to bring about a world of peace and prosperity for the righteous, and the downfall of unbelievers, was imminent. Such beliefs were to be particularly influential in Tauranga.[2] The conversion of the

1. Although the name 'Hauhau' has come to be seen as a derogatory term created by hostile Pakeha commentators, Head points out that Te Ua himself described his followers as Hauhau: Lyndsay Head, 'The Gospel of Te Ua Haumene', JPS, vol 101, no 1 (March 1992), p 28.

2. Before the arrival of Pai Marire, millenarian beliefs had already appeared amongst Tauranga Maori at the village of Matarawa in 1849: see Bronwyn Elsmore, *Mana from Heaven: A Century of Maori Prophets in New Zealand* (Tauranga: Moana Press, 1989), ch 13.

second Maori King, Matutaera, to Pai Marire gave the movement added impetus. In August 1864, Matutaera was baptised by Te Ua, who gave him the name Tawhiao, and following this event Pai Marire emissaries went out to the eastern part of the North Island to preach Te Ua's gospel.[3] The conversion of Matutaera forged a link between Pai Marire and the Kingitanga, and while the relationship between the two movements varied in different parts of the country, in Tauranga they were very closely connected.

9.2.1 The arrival of Pai Marire in Tauranga

At the end of 1864, the teachings of Te Ua reached Tauranga, causing great interest among Maori and great anxiety among Pakeha officials. In the conflict that ensued over the next few years, the new religion played an important part, influencing the attitudes of Maori and Pakeha alike.

In November 1864, Henry Clarke reported that there was 'a sullen gloom hanging over many of the Natives who have made their submission'. He believed that something was 'weighing on their minds', and noted that 'extravagant' rumours were circulating to the effect that the day of deliverance for adherents of the Kingitanga and Pai Marire was at hand.[4] In the week before Christmas, it was reported that Hori Tupaea had summoned Tauranga Maori to a meeting with a Pai Marire emissary known as Te Tiu ('the Jew') Tamihana.[5] It was rumoured that those who did not convert to Pai Marire would be destroyed, along with the Pakeha. Another rumour warned that the Pakeha were going to kill all the Maori. Then, on Christmas day, nearly all Tauranga Maori suddenly went inland.[6] This caused great consternation among Pakeha at Te Papa, who feared that the real purpose of the meeting was not religious but military. The *New Zealander*'s Tauranga correspondent was sure that, 'if the "Tohunga" declares war, which there is not the slightest doubt but he will do, the whole tribe will rise *en masse* and endeavour to drive us into the sea'.[7] However, Henry Rice, the interpreter for the military forces at Tauranga, was told by some Maori who had returned from the meeting that 'it would injure "Pai Marire" to take up worldly arms, it is to [the] spiritual that we are to be indebted for our destruction'.[8]

In early January 1865, Clarke and Rice visited the inland settlements, accompanied by several rangatira, and persuaded many Maori to return to the coast.[9] By early February,

3. On Pai Marire generally, see Paul Clark, '*Hauhau*': *The Pai Marire Search for Maori Identity* (Auckland: Auckland University Press/Oxford University Press, 1975); Elsmore, ch 25; 'Te Ua Haumene', DNZB, vol 1, p 513; Lyndsay Head, 'The Gospel of Te Ua Haumene', pp 7–44.

4. Clarke to Colonial Secretar, Native Department, 14 November 1864, AJHR, 1864, E-8, p 5

5. Tamihana was subsequently identified by Thomas Smith as Tamihana Rikikiki from Ngati Ruru of Waikato: see Smith to Native Minister, 13 February 1865, BPP, vol 14, pp 308–309.

6. Document A2, pp 71–77; Rice to Native Minister, 28 December 1864; Colonel Greer to deputy quarter-master general, 26 December 1864, BPP, vol 14, pp 263–266

7. *New Zealander*, 5 January 1865 (doc A2, p 76)

8. Rice to Native Minister, 28 December 1864, BPP, vol 14, p 264

9. Document A2, pp 77–81

Clarke found that Tauranga Maori had, 'with a very few exceptions, returned to their homes'.Clarke was concerned that many of them had returned as practising believers in Pai Marire, 'a system set up in direct antagonism to the Queen's government', but he was reluctant to take any action against these people, for fear of driving them back into the bush.[10]

On the other hand, Rice had no success in persuading Pirirakau to return to the coast – they were described as 'a turbulent, obstinate people' who refused to give up Pai Marire.[11] Rice was instructed by Colonel Greer, the military commander in Tauranga, to tell local Maori that they would be left alone so long as they remained peacefully by the coast but that preparation for a lengthy stay in the bush would be taken as evidence of hostile intent. They replied that their previous departure had been motivated not by hostility to the Government but simply because they intended planting largely inland, where 'the land yields two-fold'. Consequently, they would sometimes live inland and sometimes on the coast.[12] This seems a reasonable explanation to us, because Pirirakau's coastal land at Te Puna was swampy and probably less suitable for cropping than their settlements at Whakamarama and Waiwhatawhata on the edge of the bush.

9.2.2 The arrest of Hori Tupaea

In his letter to the Native Minister of 6 February, Rice mentioned a report that Hori Tupaea, Te Tiu Tamihana, and a large group of followers were travelling from Kaimai via Te Ranga to Maketu, 'marking as they went the future boundary line for the Pai Marire people, and that portion *they consider* is the property of the Queenites, black and white' (emphasis in original).[13] This news was of great concern to Greer, who wrote to some Te Arawa chiefs asking them to apprehend Tupaea and the others. They were taken at Rotoiti, and Rice hastened to the lake to 'shield Hori Tupaea and the other prisoners from the insults of Te Arawa'. The prisoners were marched to Te Papa, where, at the request of other Tauranga chiefs, they were held pending instructions from the Governor. When these instructions were received, they said to send Tupaea and several others to Auckland, and this was duly done.[14]

In the meantime, Tupaea had expressed regret for his actions and promised to return his allegiance to the Governor. He was reported to have denied having joined Pai Marire or having written the letter calling on Tauranga Maori to meet Te Tiu Tamihana. Tupaea explained that he had travelled with Tamihana at the latter's request, and that he was in fact travelling to a place where a relative of his had recently died.[15] On reaching Auckland, Tupaea

10. Clarke to Native Minister, 4 February 1865, AJHR, 1865, E-4, pp 13–14
11. *New Zealander*, 15 January 1865 (doc A2, pp 81–82)
12. Rice to Native Minister, 6 February 1865, AJHR, 1865, E-4, p 15
13. Ibid
14. See the correspondence in BPP, vol 14, pp 303–310; doc A2, p 84
15. Greer to deputy quarter-master general, 11 February 1865; Smith to Grey, 13 February 1865, BPP, vol 14, pp 306–308

'offered to make the fullest submission to the Queen's authority, and to aid in any manner he could in bringing about a lasting peace', according to Grey. He was released on parole after agreeing to certain conditions: he would take the oath of allegiance, assist the Governor 'in putting an end to the present disturbances', reside at a place of the Governor's choosing 'until the country is again in a tranquil state', and observe the terms of peace given by the Governor to Tauranga Maori. The other prisoners sent to Auckland were not treated so leniently – they were court-martialled on charges of inciting rebellion.[16]

Counsel for Te Whanau a Tauwhao me Te Ngare argued that the unjustified arrest and imprisonment of Hori Tupaea was in breach of the Treaty and was directly responsible for the decline in his authority and prestige. Counsel submitted that Tupaea was not treated as an equal partner by the Crown and was imprisoned like a common criminal.[17] Crown counsel's only comment on this matter was that Tupaea's involvement with Pai Marire 'led to his capture and imprisonment'.[18] We have made a finding on this issue in section 9.9.

9.2.3 Crown officials' attitudes towards Pai Marire

Greer and Clarke believed that the capture of Tupaea's party and the submission of Tupaea would, as Greer claimed, 'settle this district, and put out the Pai Marire delusion'.[19] But they were sadly disappointed, since a significant number of Tauranga Maori refused to abandon the faith. In April 1865, Clarke reported that, while many Maori had ostensibly given up Pai Marire worship, 'it has only been from fear of the consequences to themselves, on account of the close proximity of the troops'. Others had returned to their inland kainga, reportedly so that they could continue their worship without interference. Clarke predicted that if the troops left Tauranga the situation would become untenable for Pakeha within 24 hours.[20] In this, Clarke was typical of most Pakeha and quite a few Maori: he responded to Pai Marire with a mixture of fear and disgust. Clarke was the son of pioneer CMS missionary George Clarke senior and was strongly antagonistic towards Pai Marire. As he put it: 'I do not – I never have trusted a Hauhau.'[21]

Such attitudes, which would be an important factor in the events surrounding the bush campaign, need to be seen in context. Some of the acts carried out in the name of Pai Marire (whether or not these were consistent with Te Ua's original teachings) were deeply shocking to Pakeha, and to many Christian Maori. The most notable was the murder of the CMS missionary Carl Sylvius Völkner at Opotiki, which sent a shock wave through the Anglican

16. Grey to Cardwell, 10 March 1865; Grey to Wiseman, 18 February 1865, BPP, vol 14, pp 302, 310. The other prisoners sent to Auckland are listed in BPP, vol 14, p 310. Three of the other prisoners were from Tauranga hapu.
17. Document N6, p 14
18. Document O2, p 42
19. Greer to Grey, 11 February 1865, BPP, vol 14, p 305
20. Clarke to Native Minister, 18 April 1865, AJHR, 1865, E-4, pp 26–27
21. Clarke to Smith, 10 August 1865, MS283, vol 1, p 112, Auckland Institute and Museum Library (doc A57, p 75)

and wider Pakeha community. The beliefs of Pai Marire were almost completely incomprehensible to Pakeha, who were content to write them off as a reversion to barbarism or a political conspiracy against the Government. It is therefore not surprising that Pai Marire was interpreted as a threat.

However, we have a responsibility also to try to understand things from the perspective of those Maori who joined Pai Marire. For some Tauranga Maori, the movement offered a message of deliverance in the face of defeat and land loss, a sense of certainty at a time of instability, and a promise of peace in the wake of war. Believers lived in expectation of a future in which the world would be radically transformed, the righteous would be rewarded, and the unbelievers punished. It does not follow, however, that they planned to bring about this transformation by violent means. Researcher Lyndsay Head, giving evidence for the Crown in the Mohaka ki Ahuriri inquiry, suggested that 'the line between spiritual and human agency was never clearly drawn' in Pai Marire belief and practice. She saw a 'contradiction in the heart of the Hauhau message between a militant spirituality and a political aspiration to limit the theatre of war'. This contradiction, she argued, could lead to violence, both because believers could come to see themselves as agents of divine vengeance and because non-believers (Maori and Pakeha alike) could interpret the language of Pai Marire as a threat.[22] While this is a fair point, and while the actions of adherents must be assessed at the local level where the contradiction identified by Head was worked out, it is important to understand that Pai Marire was not (as Crown officials often supposed) an inherently violent religion.

At a hui on 30 December 1864 attended by some Tauranga rangatira and coinciding with the receipt of Governor Grey's confiscation proclamation for the Waikato, King Tawhiao announced the division of the North Island into 'posts of peace' and 'posts of war'. Tauranga was designated a post of war.[23] This was not a declaration of war but a recognition that war had already arrived and needed to be contained. As a group of Hawke's Bay Pai Marire explained in April 1865, after listing the posts of war: 'That bloodshed arose from Pakeha's hands. It will not be right to bring that blood hither, leave it where it is.'[24] It is revealing that in Maori the posts of war and peace were designated 'pooti o te riri' and 'pooti o te riri kore': literally, 'posts of the war' and 'posts of the not-war'.[25] For adherents, a state of 'riri kore', in which the conditions which gave rise to war could still exist, was quite different from the perfect peace, the peace combined with goodness – pai marire – which they believed would be brought about by divine intervention. From a Pai Marire perspective, the war was started by

22. Lyndsay Head, 'Land, Citizenship and the *Mana Motuhake* Movements among Ngati Kahungunu: A Study of Maori Language Documents in Ngati Kahungunu History, 1840–1865', June 1999 (Wai 201 ROI, doc W11), pp 159–222 (quotations at pp 159, 170, 187)

23. Ibid, pp 153, 169

24. Paora Toki and others to McLean and Cooper, 1 April 1865, McLean papers TS, vol 23, p 245 (as quoted in Clark, p 67)

25. Clarke to Native Minister, 18 April 1865, AJHR, 1865, E-4, p 27; Head, 'Land, Citizenship and the *Mana Motuhake* Movements', pp 152, 154, 169. 'Pooti' (post) was a term in 'Hauhau English'. It may have referred to the niu poles, which were part of Pai Marire worship. 'Riri' can mean anger as well as war.

the Governor and was to be contained, not encouraged. Their ultimate aspiration was for peace, but the creation of peace was in God's hands.

Such views, however, are not well represented in the documents. Our information about Pai Marire in Tauranga comes mainly from the reports of Pakeha officials and pro-Government Maori who were hostile to 'Hauhau fanaticism'. Even when letters or statements from Pai Marire followers appear in the sources available to us, they are usually in English, so we are unable to assess the accuracy of the translation or whether any subtleties of Maori expression have been lost. It is also important to remember that Pai Marire was a religion in which Old Testament notions of deliverance and retribution were deeply embedded. As a result, some care is needed in interpreting the occasionally violent language of its adherents. Lyndsay Head writes of 'the "double track" of the Hauhau mind [which] meant that they could interpret events either spiritually or actually. This meant that the Hauhau could utter threats and still not intend to fight.' She points out that, to other Maori, this threatening language could have been interpreted only as a challenge to fight.[26] The same is true of Pakeha officials, whose incomprehension is quite understandable when viewed in historical context. It remains to be seen whether the actions of these officials were reasonable when Pai Marire adherents opposed the survey of the confiscated block at Tauranga.

9.3 Location of the Confiscated Block

While the location of the block to be retained by the Crown would no doubt have been controversial no matter where it had been placed, the confiscation of lands belonging predominantly to hapu of Ngati Ranginui has been a particular source of grievance. We therefore examine how the location of the 50,000-acre confiscated block was decided, before discussing the survey of its boundaries.

At the August 1864 pacification hui (see sec 5.2.6), the assembled Maori were unable to agree among themselves about the location of land to be forfeited so they left it to the Governor to decide.[27] Grey promised that 'in the ultimate settlement of your lands the amount taken shall not exceed one-fourth part of the whole lands', but he did not specify where this land was to be located.[28] In June 1865, Clarke said that it had been proposed after the pacification hui that the confiscated block should be located between the Waimapu and Wairoa Rivers. However, Clarke admitted that Maori 'took exception' to this proposal, because 'if it was carried out the punishment would fall heavily upon some, while others would not lose an inch of land, although equally implicated in the war'. At this time Clarke,

26. Head, 'Land, Citizenship and the *Mana Motuhake* Movements', p 197

27. Clarke to Fox, 7 August 1864, pp 6–7; Clarke to Mantell, 23 June 1865, p 12; Clarke to Richmond, 10 May 1867, p 62, AJHR, 1867, A-20, (doc M9(a))

28. 'Notes of Speeches of the Pacification Hui', 5, 6 August 1864, AJHR, 1867, A-20, pp 5–6 (doc M9(a))

like Chief Judge Fenton of the new Native Land Court, expected that the court would be involved in investigating Maori claims to various categories of land in the Tauranga district, although, as we pointed out in chapter 6, this never happened. As we discussed at section 2.5, Clarke believed that: 'Most of the difficulties in settling the claims in this district will arise from the fact that the Ngaiterangi claim only by conquest.' Ngai Te Rangi had intermarried with the original inhabitants, Clarke wrote, and the descendants of such intermarriage could choose to claim on the basis of rights which predated the Ngai Te Rangi conquest. Clarke predicted, with some accuracy: 'If any trouble arises in carrying out the plans of the Government it will arise from those who support the claims of the original inhabitants, many of whom have never come in [ie, never surrendered].'[29]

Despite the reported Maori rejection of the proposed Wairoa–Waimapu boundaries of the confiscated block, Crown officials did not reconsider their plans. Evidence of how the precise boundaries of the block were set is discussed below, but we note here that there is no clear evidence as to why the general Wairoa–Waimapu area was chosen as the location for the block to be retained by the Crown. The choice seems to have been largely pragmatic. At the centre of the Waimapu–Wairoa area was the CMS block at Te Papa, which had been occupied by the military and came to be regarded as a necessary site for the new township and military settlement. Surveying of this locality for town, suburban, and rural lots for the military settlers began as early as September 1864 – before any land had been formally confiscated. If the 50,000 acres were to be taken in one contiguous block, it would have made sense to the Crown to take the necessary amount of land immediately beyond the bounds of the CMS block. If any Maori, and particularly loyal Maori, were hurt in the process, the Crown needed to compensate them with reserves either in that block or elsewhere, as we note in our next chapter.

The location of the confiscated block meant that the punishment fell more heavily on hapu of Ngati Ranginui than on Ngai Te Rangi, but there is no evidence that this was the Crown's intention, or that Ngai Te Rangi deliberately 'betrayed' Ngati Ranginui. Counsel for Ngai Te Rangi accepted that, while they had interests in the confiscated block, the impact of confiscation was much greater on Ngati Ranginui. We agree, and also endorse the following statement by counsel for Ngai Te Rangi:

> The Wairoa–Waimapu boundaries make perfect sense for the Crown. The lands between those rivers are of good agricultural quality (up to a certain point) and also includes the land on which Te Papa was based.[30] It was for these practical reasons that the Crown chose those lands and not, as has been alleged, certain individual Ngai Te Rangi giving away the lands of others.[31]

29. Clarke to Mantell, 23 June 1865, AJHR, 1867, A-20, p 12 (doc M9(a))
30. As discussed above, however, the Te Papa block was not included in the confiscation.
31. Document N20, p 28

It is clear that the location of the confiscated block was a decision made by the Crown alone.

In chapter 5, we discussed the confusion that arose from Grey's ambiguous promise at the August 1864 hui to take one-quarter of the land and return the rest. Maori at the hui believed that Grey's promise was addressed to those who had fought and surrendered and that it applied only to one-quarter of their lands; they understood that those who had been loyal to the Crown would retain all of their lands. As we noted, some Maori were expressing this view as late as February 1866. For example, Enoka Te Whanake said: 'The fourth acre was taken for the sin (*hara*) I had committed, my land only was taken because I had sinned: it was not taken from the men who did not fight.'[32] But the Crown interpreted Grey's promise to mean that it was entitled to take one quarter of 'Ngaiterangi' land – and it equated the latter with the whole of the proposed confiscation district. This gave the Crown some 50,000 acres of a district estimated to contain more than 200,000 acres.

It appears that the Crown's plan to retain 50,000 acres in a contiguous block was not made clear to Tauranga Maori until February 1866, when a group of them met with Defence Minister Theodore Haultain to 'settle this question of land now so long pending'. As we have pointed out (see sec 5.2.6), considerable differences between the Government and Tauranga Maori about the extent of the land to be confiscated were manifest at this meeting. Enoka's speech, noted above and quoted at greater length in chapter 5, is evidence of this.

It is easy to see why Enoka's claim that the Governor had promised to take only a quarter of the land of former 'rebels', wherever this land was located, was unacceptable to the Crown. First, it would have been difficult to separate the land belonging to surrendered 'rebels' from that belonging to 'loyal' Maori. Secondly, such a proposal would have been contrary to the Crown's plan to create a defensible settlement. Had the land available for settlement been scattered throughout the district, rather than concentrated in one block, it would have been much harder to guarantee the security of the settlers.

At the meeting between Grey and Whitaker and Tauranga Maori a month later (see sec 5.2.6), the Crown's objectives were made abundantly clear. William Mair subsequently recalled that as many as 500 'Ngaiterangi' were present and that 'the people were rather inclined to be domineering till HE [Grey] spoke very plainly & shut them up'.[33] The *Daily Southern Cross* reported that Maori were despondent when they found out that the Governor was to meet them at the Te Papa camp rather than in their own settlements, saying: 'We shall stand no chance now, he is determined to meet on his own grounds'. The reporter also noted the arrival from Opotiki of men of the 1st and 3rd Waikato Regiments, who had come to be settled on the confiscated land. He added that: 'The timely arrival of this force told volumes on the minds of the natives, who the next morning might be seen walking about very dejected and disappointed, imagining that this had all been preconcerted by the Government.'[34]

32. 'Proceedings of a Meeting Held with the Tauranga Natives', 26 February 1866, AJHR, 1867, A-20, p 19 (doc M9(a))
33. William Mair, diary, 26 March 1866, MS1466, ATL (doc M9, p 168)
34. *Daily Southern Cross*, 4 April 1866 (doc M9(d))

When the meeting got under way, the chiefs were shown charts of Tauranga. The confiscated block was described as 'bounded by the Te Papa station, following the Waimapu river on to the mountain; thence along the skirt in the direction of the Wairoa, taking in Judea and Otamaotai [*sic*]'.[35] According to Mair, the meeting was informed that the survey would be extended as far as was necessary to encompass the 50,000 acres and that 'it might extend as far as Te Puna' – that is, across the Wairoa River. At this, those present became agitated and said that they would not agree to the boundary.[36] But Grey 'called upon them at once to assent to his proposition, otherwise Government might take possession of the whole of their lands'. Following Grey's threat, 'an assent was obtained, which appeared to be satisfactory'.[37] But even then, the boundaries of the block to be taken were not finally decided. We take up this issue below.

The demoralised state of Tauranga Maori at this time is apparent from Clarke's comment that 'all their bounce seems to be taken out of them'. Clarke wanted to take advantage of this and push on with the survey as quickly as possible, especially of the external boundaries of the confiscated block.[38]

9.4 Surveying the Confiscated Block

The surveying of the confiscated block was a drawn-out process, largely because of Maori resistance to it. This resistance, and the Government's determination to proceed with the survey, led to the conflict known as the 'bush campaign' in early 1867.

9.4.1 Surveying begins

Theophilus Heale commenced his survey of the Te Puna township, the area near Te Papa, and Otumoetai in September 1864,[39] well before the land was confiscated under the May 1865 Order in Council. At this point, the role of Wiremu Tamihana became crucial. Owing to the strong links between the hapu of Ngati Ranginui and Ngati Haua and the mana Tamihana held as a leader of the Kingitanga, Maori opposed to the Government's surveying at Tauranga frequently turned to Tamihana for advice. As already mentioned (sec 7.3.4), in October Tamihana wrote to Heale calling on him to restrict his surveying to the coast and not to survey inland.[40] Tamihana later explained that in surveying the confiscated block Heale was dealing

35. Ibid
36. Mair to Rolleston, 20 March 1867, AJHR, 1867, A-20, p 53
37. *Daily Southern Cross*, 4 April 1866 (doc M9(d))
38. Clarke to Smith, 18 April 1866, letters to Smith, vol 1, 1866, MS28, Tauranga Public Library (doc J2, p 89)
39. Document M9, p 161
40. Tamihana to Heale, 8 October 1864, AJHR, 1864, E-8, p 6

with land 'upon which other tribes than Ngaiterangi had claim'. Tamihana's informant had 'asked permission to cut them off (Captain Heale and party)', but Tamihana had refused, 'as it would be said to be a murder'. Instead, he had written the October letter to Heale, who replied that he would have to await further instructions from the Governor. Tamihana was twice more asked by individual Tauranga Maori for permission to kill Heale and his party, but he refused to allow this. However, after writing to Heale, Tamihana decided to leave the matter in the hands of the Tauranga people, reasoning that Heale had been warned of his danger, and 'if they killed Heale it was not his [Tamihana's] fault'. Tamihana also reiterated his personal commitment to peace, explaining that, while he had not converted to Pai Marire, he agreed with their policy 'that all weapons were to be laid aside'.[41] As a result of Tamihana's intervention, and with the approval of the Government, Heale did not extend his survey inland.[42]

By April 1865, Heale had called a halt to his surveying, pending a final determination of the land to be confiscated and a settlement of Maori land claims. In his letter to the Defence Minister, Heale reported that the delay in settling the land question had given rise to a 'disastrous condition of excitement and discontent' among Tauranga Maori. He claimed that, when he had commenced surveying, Maori near the coast had expected the coastal land to be laid out immediately for occupation by military settlers. But, because of the delays, Maori were increasingly coming to believe that the Government had abandoned its intention to confiscate their land. This belief was encouraged by the activity of speculators, who were trying to buy Tauranga land now that the Native Lands Act 1862 was in force, as we noted in chapter 6. Heale added that, because of the prevailing uncertainty, Tauranga Maori were 'abstaining from cultivating beyond what is necessary to supply their immediate wants, and are deterred from entering into any settled course of life'.[43]

James Mackay, the civil commissioner for Hauraki, also believed that much of the opposition to surveying in this period was due to the activities of speculators, who had told Maori that the Government was not paying them enough for their land.[44] The *New Zealand Herald* reported in May 1865 that 'The Tauranga natives are getting hard pushed for cash. They have commenced the old game of selling land, which is not theirs, at Matepu and Judea, to anyone foolish enough to become purchasers.'[45] Pirirakau had land within the area where the speculators were operating, and it is likely that their opposition to the surveying was prompted in part by anger at speculators having arranged to purchase their land from other Maori.

In June 1865, Heale again expressed his concern about the delays in settling the Tauranga land question:

41. Puckey to Halse, 14 December 1864, AJHR, 1865, E-4, p 8
42. Heale, memorandum on Tauranga affairs, 27 June 1865, AJHR, 1867, A-20, p 14 (docM9(a))
43. Heale to Defence Minister, 7 April 1865, AJHR, 1867, A-20, pp 8–9 (doc M9(a))
44. Document A2, p 93
45. *New Zealand Herald*, 16 May 1865 (doc M9, p 235)

> the Natives, disappointed in their expectations of prompt action on the part of the Government, and wearied by the long interval of absolute uncertainty as to the tenure of their lands, have gradually relaxed from the fervent loyalty they had adopted after Te Ranga. The Pirirakau, and other outlying hapus, have adopted the Paimarire faith (but without any offensive disposition). Wm Thompson [Wiremu Tamihana], who, in his letters to the writer, had fully assented to the surveying of Te Puna, has since written to Colonel Greer announcing his intention to dispute its occupation; and affairs appear to be drifting back into the confusion which first led the Ngaiterangi into the King party.[46]

9.4.2 Surveying resumes

After Heale suspended surveying in April 1865, there was a delay of about a year before it was made clear to Tauranga Maori that the Government intended to take the land between the Waimapu and Wairoa Rivers. Grey and Whitaker explained this at the March 1866 meeting, when they also stated that, if it was necessary in order to obtain the full 50,000 acres, then the boundary of the confiscated block would be extended beyond the Wairoa towards Te Puna. Grey threatened that, if Tauranga Maori did not accept this, he would take all of their lands.

Before we discuss the prolonged conflict that ensued over the extension of the western boundary of the confiscated block, we note that there was also some difficulty over the eastern boundary, which had been presumed to lie along the Waimapu River. According to Mair, it was agreed at the March 1866 meeting that Clarke would determine this boundary.[47] Whitaker wanted to extend the boundary to Maungatapu, taking in a greater area of Ngati He territory. It appears that some Ngati He chiefs (and possibly others) objected, wanting the boundary to follow the Waimapu River. It was therefore agreed that Clarke would set the boundary at Waimapu, or somewhere between there and Maungatapu.[48] Clarke decided (apparently in consultation with certain chiefs of Ngati He and Ngai Te Ahi) that the eastern boundary should run up the Waimapu to Ngatoropeke, where it would deviate from the river in a straight line before rejoining the Waimapu and continuing up the river into the forest. Clarke reported that around 1000 acres east of the Waimapu were thereby included in the confiscated block.[49]

Grey's threat to take all the land he needed, going across the Wairoa River if necessary, seemed to clear the way for the surveying of the confiscated block to be completed. In May 1866, Frederic Utting was appointed district surveyor and resumed the survey. At the end of the month, Utting reported that 'nothing like an adequate quantity of "good agricultural

46. Heale, memorandum on Tauranga affairs, 27 June 1865, AJHR, 1867, A-20, p 14 (doc M9(a))
47. Mair to Rolleston, 20 March 1867, AJHR, 1867, A-20, p 53
48. Document J2, pp 88–89
49. Clarke to Richmond, 10 May 1867; Clarke to Whitaker, 1 May 1866, AJHR, 1867, A-20, pp 62, 64 (doc M9(a)); doc J2, p 89)

land" can be obtained within the limits of the confiscated block, as the greater part of it is of so rugged and broken a character, that scarcely any practicable road at all can be laid out upon it'.[50]

However, Utting did not draw any connection between the quality of the land and the need to survey across the Wairoa – it was the stopping of the survey by Maori in the south which he identified as the reason why insufficient land was available between the Wairoa and Waimapu Rivers, as he explained the following month:

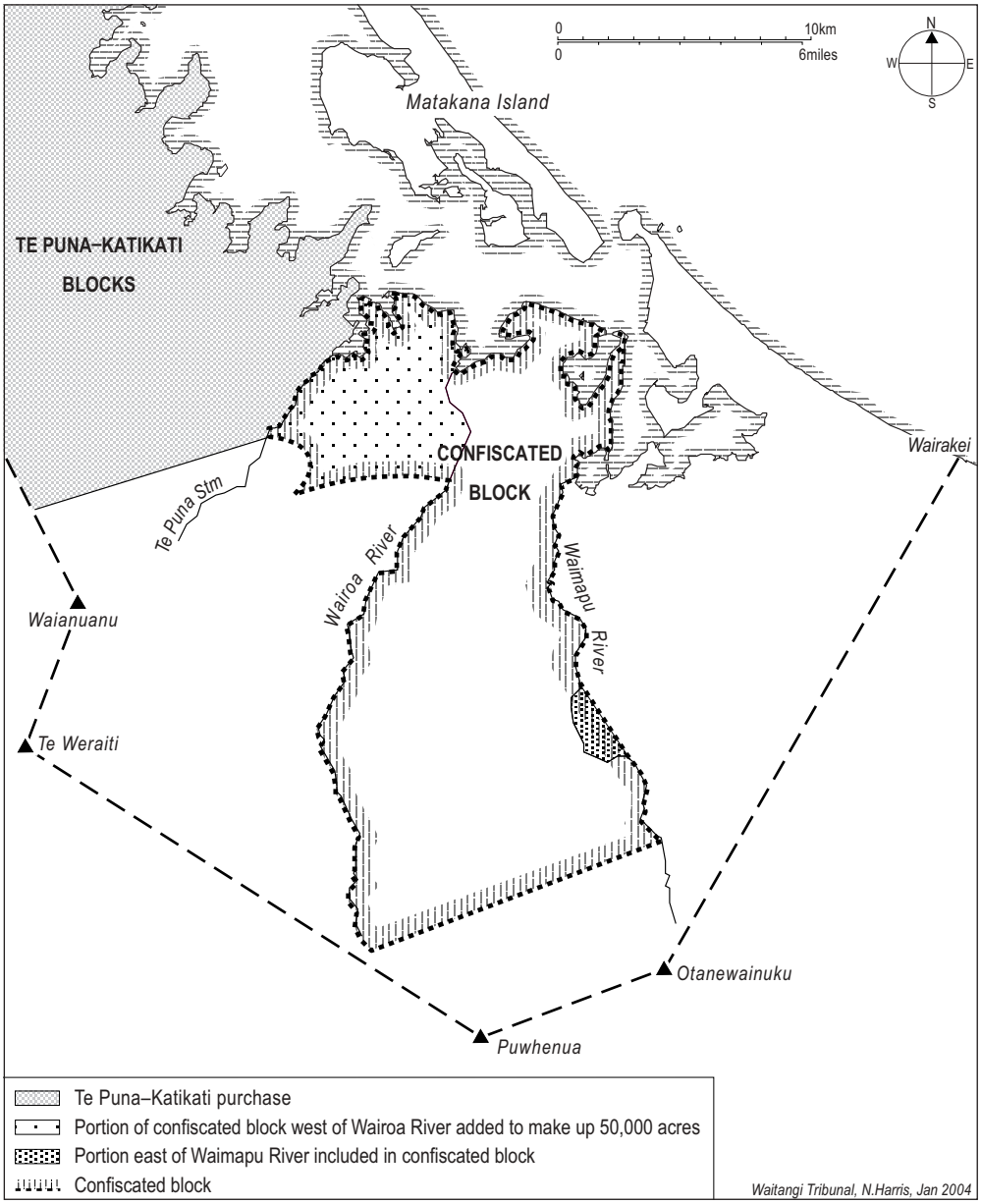
> In order to obtain the required 50,000 acres of land it will be necessary to take some upon the West side of the Wairoa River, as the natives will not allow the Surveyors to go beyond a certain point in a Southerly direction viz, about half a mile beyond the extreme end of Turner & Brown's survey of the Eastern boundary.[51]

It is not entirely clear who stopped the survey from proceeding further south, but according to Mackay, Te Arawa claims around Puwhenua were one reason for setting the boundary further north.[52] As we mention below, Maori associated with Wiremu Tamihana were also resisting surveying in the south of the confiscated block at this time. Whatever the nature of the Maori objections to surveying further south, it is clear that this resistance was further reason to extend the survey across the Wairoa River, a decision that was approved by Clarke.

The halt to the work in the south may have been related in part to a June 1866 letter from Tamihana that protested the surveying around Paengaroa and Oropi kainga. Tamihana wrote to Clarke asking him to 'take back your chain from the land of the *King*' (emphasis in original).[53] The surveyors were apparently threatened, and withdrew, but they were able to resume their work safely after Clarke intervened.[54] In May 1866, Tamihana had directed Pirirakau to establish an aukati on the Wairere road between Tauranga and 'the Thames', within the Te Puna block. Those who crossed the Wairere road aukati were liable to have their horses taken.[55] During the next year, these two areas – the far south of the confiscated block and the land to the west of the Wairoa River – were to be the focus of conflict.

For some three weeks from late June 1866, Clarke and Mackay were engaged in settling outstanding claims concerning the Te Puna–Katikati purchase at a large extended meeting held at Te Papa (see sec 7.5). Pirirakau came in from the bush to attend, but the meeting resulted in a further hardening of their attitude. According to Mackay, Pirirakau claimed all the land between the Wairoa and Waipapa Rivers extending back to the Kaimai Range. But this was denied by the whole of Ngai Te Rangi, who 'contended that the Pirirakau claims were

50. Utting to provincial surveyor, 29 May 1866, district surveyors' letter book, Tauranga Public Library (doc M9, p 170)
51. Ibid
52. Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c)(82))
53. Tamihana to Clarke, 19 June 1866, *New Zealand Herald*, 5 July 1866, doc M9, p 171
54. Document M9, p 171
55. Clarke to Richmond, 3 October 1866, AJHR, 1867, A-20, p 23; Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c)(82))



Map 16: Confiscated block boundaries

confined to the back forest between Te Wairoa and Te Puna; and that those were only the rights of a debased tribe the "mana" was with them'. Enraged at being insulted by Ngai Te Rangi, Pirirakau left the meeting. Mackay subsequently tried to arrange payment and reserves for them separately, but he was told that they 'would not make any terms'.[56]

It was after this meeting that the surveying of the confiscated block on the western side of the Wairoa began and Pirirakau resistance was encountered: Tamihana wrote to both Clarke and the survey party calling on them to stop the surveying, and some Maori, identified as

56. Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c)(82))

Pirirakau, took the surveyors' tools, saying that they were doing so under instructions from Tamihana.[57] Clarke, however, was determined to continue the surveying in this area, remarking that:

> it would have been a manifest injustice to the other Tauranga Natives that the Pirirakau – the most implicated in the rebellion, many of whom have never surrendered, and who are now the most troublesome in the district – should be allowed to escape without the forfeiture of a single acre of land, while their less guilty neighbours have in some instances lost nearly all the land they possessed.[58]

Clarke and Mackay considered Pirirakau to be a small group of unsurrendered 'rebels' (Mackay estimated their number at 87),[59] who were 'of the *inferior* hapus of Ngaiterangi, and . . . were always kept in a state of vassalage' (emphasis in original).[60] Clarke had no sympathy for what he understood to be the reasons behind Pirirakau's attempt to stop the surveying west of the Wairoa: namely, 'that the land belonged to them, that they were not parties to the Tauranga surrender, and that the Ngaiterangi had no right to cede their territory'.[61] He refrained, however, from trying to apprehend those who had taken the surveyors' instruments in order to avoid provoking a clash.[62]

Having obtained no satisfaction from Clarke, Tamihana wrote to Grey in October 1866 asking for the survey to be discontinued 'lest we all again become confused' ('kei noho pohehe ano tatou').[63] Grey replied that he had ordered an inquiry to be made into the extension of the survey across the Wairoa and asked in return that Tamihana tell Pirirakau to give up the surveyors' instruments. 'If wrong has been done by the surveyors', Grey promised, 'I will see that the wrong be redressed, when fair inquiry has been made.'[64] A letter from native secretary William Rolleston followed explaining that the surveying of land was not in and of itself an indication that the Europeans intended to seize that land. Rolleston asked Tauranga Maori to 'wait quietly till the Governor comes', so that any mistakes made in surveying the land could be rectified.[65] However, Tamihana never received this letter. Mackay and Clarke decided not to forward it to him, believing Tamihana's complaint to be without foundation. For this, they were reprimanded, because their inaction made it appear that the Government

57. Jordan to Clarke, 18 September 1866; Tamihana to Clarke, 23 August 1866; Tamihana to surveyors, 2 September 1866; Hewson to Clarke, 19 September 1866, AJHR, 1867, A-20, pp 21–22 (doc M9(a)); doc M9(c)(82))
58. Clarke to Richmond, 20 September 1866, AJHR, 1867, A-20, p 21 (doc M9(a))
59. Mackay to Rolleston, 25 September 1866, AJHR, 1867, A-20, p 22 (doc M9(a))
60. Clarke to Richmond, 25 September 1866, AJHR, 1867, A-20, pp 22–23 (doc M9(a))
61. Ibid, p 23 (doc M9(a))
62. Clarke to Richmond, 20 September 1866, AJHR, 1867, A-20, p 21 (doc M9(a))
63. Tamihana to Grey, 11 October 1866, AJHR, 1867, A-20, p 23 (doc M9(a)). The Maori text of this letter from GNZ MA 249, Grey papers, Auckland Public Library, is quoted in Evelyn Stokes, *Wiremu Tamihana: Rangatira* (Wellington: Huia Publishers, 2002), p 511.
64. Grey to Tamihana, 22 October 1866, AJHR, 1867, A-20, p 24 (doc M9(a))
65. Rolleston to Tamihana, 30 October 1866, AJHR, 1867, A-20, p 26 (doc M9(a))

was not keeping its word: Tamihana had been told that an inquiry would take place but had not been told that surveying would continue in the meantime.[66]

9.4.3 Adjusting the western boundary

In late October 1866, Mackay and Clarke were instructed by Whitaker to meet with Tauranga Maori to settle the Te Puna–Katikati purchase and to make arrangements for the reserves in the confiscated block. Before the meeting, Mackay asked the district surveyor, Horatio Warner, how much land was within the area surveyed for military settlement (the confiscated block). Mackay no doubt saw this as fulfilling the Governor's promise to conduct an inquiry into surveying west of the Wairoa. Warner's figures revealed that 17,000 acres had been surveyed west of the Wairoa River, including the land at Otumoetai West that Heale had surveyed in 1865. An estimated 38,000 acres had been surveyed between the Wairoa and Waimapu Rivers, making a total of 55,000 acres (this was increased to 58,000 once surveying in the south of the block was completed). Warner estimated that one-eighth of this area was swamp which would be unavailable for settlement.[67]

On 31 October, Tauranga Maori assembled at Motuhoa for the meeting with Mackay and Clarke (see sec 7.5). The meeting began with a discussion of the boundaries of the confiscated block. Mackay and Clarke were asked by those present whether 50,000 acres could be found between the Wairoa and Waimapu Rivers. They answered that this was not possible and that Te Arawa claims in the south prevented the extension of the survey in that direction. Consequently, the survey had to be extended across the Wairoa towards Te Puna, an action which Clarke maintained was in accordance with the outcome of the March 1866 meeting.[68]

Mackay then explained that 55,000 acres had been surveyed for the confiscated block, which was 5000 acres in excess of the area fixed by the Governor. He therefore proposed to give back 5000 acres by modifying the boundary of the block west of the Wairoa River. The new boundary would follow the Ruangarara Stream west from its junction with the Wairoa, then join up with Te Puna Stream via a dog-leg which avoided several Pirirakau and Ngati Rangi kainga. Mackay also offered to make reserves for 'Some friendly Natives who had lost considerable pieces of land within the 50,000 acre block' and for some ex-rebels who had little land elsewhere. Most of these reserves were said to be on or near the water. According to Mackay, these reserves came to more than 6000 acres within the confiscated block, leaving the Crown with some 44,000 acres.[69] However, we note that a recent calculation of the area of

66. Halse to Mackay, 5 December 1866, AJHR, 1867, A-20, pp 35–36 (doc M9(a))

67. Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c), item 82); Warner, 'Return of Approximate Aareas of the Several Blocks Surveyed and Being Surveyed', 31 October 1866 (with annotations by Mackay, 25 November 1866), AJHR, 1867, A-20, pp 34–35 (doc M9(a))

68. Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c)(82))

69. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 27; Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c)(82))

the confiscated block suggests that the Crown retained almost exactly 50,000 acres, exclusive of reserves.[70] Eventually, over 8700 acres of land was awarded to Maori within the block.[71] The 'reserves' Mackay referred to are probably only the initial awards to prominent rangatira and some hapu reserves. These were followed by various other awards, including land to be administrated as endowment reserves, land awarded in return for military service, and grants for the children of Maori mothers and Pakeha fathers. We discuss these further in chapter 10.

Mackay's proposals were agreed to by the assembled Maori, including Maungapohatu of Pirirakau. Mackay's misgivings about the absence of the rest of Pirirakau were dismissed by the other Maori, who apparently asked: 'What have those slaves to do with it? The only man of any rank is Maungapohatu, he is connected with us. Take the land, do not ask them about it.' Mackay sent another message inviting the absent Pirirakau to the meeting, but they replied that he had already heard all that they had to say: they would not agree to the confiscation or purchase of their land between the Wairoa and Waipapa Rivers.[72]

Not to be put off, Mackay, together with a number of Maori, went to Waiwhatawhata kainga, where he found Rawiri Tata, Pene Taka, and about 25 others of Pirirakau and Ngati Rangi. Mackay explained to them what had been arranged at the Motuhoa meeting (see sec 7.4). In relation to the confiscated block, Mackay claimed that Pirirakau had lost very little land for their participation in the rebellion, and he mentioned that 300 acres were to be reserved for Maungapohatu and the rest of Pirirakau. He told them that 'they had better consent to the arrangement made by the remainder of the tribe', since all those living around Tauranga harbour were 'one people'.[73]

Tata then replied, telling Mackay that he would not give up his land between the Wairoa and the Waipapa:

> I do not admit the right of the Ngaiterangi to give up my land, even though I have been in rebellion . . . It is true that Hori Tupaea has a claim over our bodies, but he has not to our land. (The speaker here pointed to the ground, and said 'Hori Tupaea has no right to that.' He then raised his hand and placed it on the upper part of his forehead, and said 'Hori Tupaea has a right to this.')[74]

As claimant Mark Nicholas of Pirirakau told the Tribunal, Tata's statement gives a clear indication of Pirirakau's stance:

70. Harold J Jenks, *Forgotten Men: The Survey of Tauranga and District, 1864–1869* (Tauranga: Tauranga District Historical Society, [1992]), p 46. However, while Jenks recalculated the area of the confiscated block as a whole, he relied on Warner's figure of 5100 acres for the area of Maori reserves within the block.

71. Document A57, pp 155–166, 185–194

72. Mackay to Rawiri Tata and others, 2 November 1866; 'Tribes of the Wairoa Extending to Waipapa' to Mackay and Clarke, 3 November 1866, AJHR, 1867, A-20, p 31 (doc M9(a))

73. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 28 (doc M9(a))

74. Ibid

> ahakoa te maha ake o nga hoia, me te whakawehe mai i te whanau, ka tino pupuri i to ratou tu. Ka whawhai tonu ratou, ahakoa ko ratou anake, e kore rawa ratou e hauraro, e hoko hoki i o ratou whenua.
>
> Despite the odds and the alienation from the rest of their whanaunga, they were stalwart to their stance. They would fight on, even alone, and never ever surrender, and never ever cede or sell their lands.[75]

Tata admitted that Maungapohatu and Ngai Te Rangi also had claims between the Wairoa and the Waipapa Rivers, but he said that he would not give up the land unless King Tawhiao and Tamihana agreed. Tamihana had given orders to his followers in Tauranga to stop the surveyors, and so it was a matter between him and the Governor. Tata threatened to take the surveyors' instruments again if they resumed surveying west of the Wairoa. Mackay, however, stood firm and denied Tamihana's right to 'interfere' in Tauranga affairs.[76]

A number of angry speeches followed. Taka declared that he would not give up any land, but he would obstruct the survey and fight Ngai Te Rangi, who were worse than the Government.[77] The extension of the confiscated block into Ngati Rangi territory west of the Wairoa evidently caused Taka to reverse his previous conciliatory stance toward the Government. Taka had advocated peace at the August 1864 hui, and as recently as the meeting with Haultain in February 1866, he had stated a desire to live peacefully among Pakeha, but from late 1866 he grew uncompromising in his hostility to the Government and in his defence of Ngati Rangi's land. Te Kepa Ringatu was equally determined, stating that 'if the survey was attempted blood would be shed'. Others also threatened violence against the surveyors, against Ngai Te Rangi, and against Mackay himself. They admitted that they were related to Ngai Te Rangi but said that 'they were King's men, and would not be dictated to by Queenites'. They distrusted the Government, believing that the land that was left to them would also be taken in a year or two.[78]

Mackay ended the meeting by telling Pirirakau and Ngati Rangi that the Government would not allow them to obstruct, threaten, or kill the surveyors, and that he intended to give the surveyors military protection while they cut a line from Ruangarara to Te Puna. Mckay said that Maori would not be harmed as long as they remained quietly in their settlements, but that any armed party approaching the surveyors would be fired on immediately. Any attack on the surveyors would also lead to the confiscation of all remaining Maori land. Mackay repeated to Pirirakau and Ngati Rangi that they should give up all claim to the

75. Document B6, pp 18–19

76. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 28 (doc M9(a)). Mackay did, however, say he was willing to see Tamihana if Tata would accompany him. Tata refused to do so, or to let Mackay cross the aukati in order to visit Tamihana: p 29.

77. Document H1, p 43; doc N14, p 8; doc P15, pp 18–19. Although Pene Taka himself was Ngai Tukairangi (of Ngai Te Rangi) and Ngati Tapu, he had married into Ngati Rangi.

78. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, pp 28–29 (doc M9(a))

confiscated block and accept a share of the Te Puna–Katikati payment through Maungapohatu.[79] Mackay thought it necessary to be 'firm' on the question of the confiscated block, since the whole of 'Ngaiterangi' (including four of Pirirakau) had agreed to give up land at the time of the 1864 pacification hui.[80]

On Mackay's return from Waiwhatawhata, he told Ngai Te Rangi chiefs of his intention to cut the boundary under armed escort. They approved of this but asked for a chance to talk to Pirirakau first. Several Ngai Te Rangi chiefs went to Waiwhatawhata and reported back that 'the Pirirakau had agreed not to interfere with the survey themselves, but said another tribe would probably do so'. This was 'anything but satisfactory' in Mackay's view, so he arranged for the survey to go ahead under the protection of 200 troops. A group of Ngai Te Rangi also accompanied Mackay and the surveyors, but they encountered no opposition. A flag was seen flying at Waiwhatawhata, but messengers were sent to tell Mackay that 'it was not a fighting flag, but only a Paimarire one'. The surveying of the boundary between Te Puna and Ruangarara was completed on 13 November. This boundary deliberately skirted both the Pirirakau and Ngati Rangi kainga and cultivations at Waiwhatawhata, Whakamarama, and Te Irihanga, which remained outside the confiscated block.[81]

9.4.4 Conflict over surveying escalates

In October 1866, reports had been received that Pirirakau and other Tauranga Maori resisting the survey were likely to get outside support. Clarke reported in late October that a group of Ngati Porou (from Mataora, south of Whangamata) and Taranaki Maori had arrived in the area with the declared intention of murdering any surveyors they found at work on the confiscated block. By 12 November, the group was reported to be at Waiwhatawhata.[82] These people were dedicated adherents of Pai Marire and the Kingitanga. They were known as the Tekaumarua ('the twelve'), a name given to groups sent by King Tawhiao in 1866 to proselytise on his behalf.[83] Clarke was also concerned about the possible threat posed by 'the notorious Hakaraia', the Waitaha chief and prophet.[84]

Mackay heard that the Tekaumarua had been prevented by the military escort from interfering with the survey west of the Wairoa but that they planned to attack surveyors operating between the Wairoa and Waimapu Rivers. He told the surveyors to return to Te Papa and recommended to Defence Minister Haultain (who had arrived on the peninsula) that troops should be sent back out with the surveyors to protect them. Haultain sent out 100 men of the

79. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 29 (doc M9(a))
80. Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c), item 82)
81. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, pp 29–30 (doc M9(a)); Mackay to Richmond, 26 June 1867, Le 1 1867/114, ArchNZ (doc M9(c), item 82)
82. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 30 (doc M9(a))
83. Clark, pp 105–106
84. Clarke to Richmond, 25 October 1866, AJHR, 1867, A-20, pp 24–25 (doc M9(a))

1st Waikato Regiment, who camped at Omanawa.[85] After this, the survey proceeded without interference, and Clarke reported on 12 December that, although many rumours of hostile movements had been received, they had proved on inquiry to be greatly exaggerated. He added that Tamihana was said to have 'signified his disapproval to the Pirirakau Natives for inviting the assistance of the lawless Ngatiporou'.[86] The troops were able to return to Te Papa by 18 December.[87]

By the end of 1866, almost all of the land between the Wairoa and Waimapu Rivers had been surveyed for settlement, although some work still remained to be done, particularly in the south of the block.[88] Accordingly, the military settlement of the confiscated block had begun, following a ballot in June 1866 to determine which companies of the 1st Waikato Regiment would be allocated land at Tauranga and which would take their land at Opotiki. Farm sections at Tauranga were granted from September 1866, and the military settlers started to take up the land allocated to them. All did not go smoothly, however. The continuing fear of Maori attack, as well as the lack of road access, deterred some from occupying the more remote sections.[89] In addition, much of the land within the confiscated block was found to be unsuitable for agriculture, being either covered in swamp or intersected by deep gullies. As a result, additional land from the Te Puna–Katikati purchase had to be made available for military settlement. Notwithstanding this, many of those who were allocated lots in the confiscated block ended up leaving their farms over the next few years.[90]

In the final days of 1866, conflict over surveying flared up again in the far south of the confiscated block. Because only minor work was needed on the southern boundary of the block, surveyors had been dispatched without military protection.[91] On 30 December, the Tekaumarua sent a message to Maori at Oropi that, if the surveyors working there did not leave, they would be killed and eaten. Oropi Maori warned the surveyors, who returned to Te Papa. The Tekaumarua, who now included Taka and some other Tauranga Maori among their number, seized goods that the surveyors had left behind. Next, they were said to have gone on to see Hakaraia at his pa, Kenana (Canaan), near Maketu.[92] Meanwhile, on 27 December, Tamihana had died.[93] The *Daily Southern Cross* commented that it was because of Tamihana's efforts that 'the Tauranga difficulty was so far settled without bloodshed, the Pirirakaus having been always closely under his influence'.[94] With the loss of Tamihana's restraining hand, renewed bloodshed in Tauranga looked increasingly likely.

85. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 30 (doc M9(a))
86. Clarke to Richmond, 12 December 1866, AJHR, 1867, A-20, p 36 (doc M9(a))
87. Document M9, p 185
88. Jenks, p 35
89. Document A2, pp 111, 114
90. Document M9, pp 186–191
91. Document B2, p 36
92. Clarke to Richmond, 8 January 1867; Skeet to Clarke, 31 December 1866; Te Ranapia's statement to Skeet, 31 December 1866; statement by Hariaua, undated, AJHR, 1867, A-20, pp 37–40 (doc M9(a))
93. 'Wiremu Tamihana Tarapipipi Te Waharoa', DNZB, vol 1, p 518
94. *Daily Southern Cross*, 3 January 1867 (doc B2, pp 36–37)

9.5 The Bush Campaign

The Tauranga bush campaign was a small-scale conflict fought out in the first half of 1867 and involved a number of different Maori groups. The end of the campaign marked the end of armed conflict in Tauranga, and of active Maori resistance to confiscation. Though relatively minor in military terms, the bush campaign played an important role in enforcing the raupatu of Tauranga land.

9.5.1 The fighting begins

In January 1867, Mackay received reports of a discussion at Tamihana's tangi, which had been attended by a number of Tauranga Maori, including members of Pirirakau. It was said that all those present at the tangi 'objected to the proceedings of the Ngatiporou in stopping the survey at Tauranga' and they blamed the renewed conflict on the removal of the surveyors' military protection. However, Tioriori Te Hura of Ngati Haua told Mackay that he had persuaded Pirirakau to keep the peace.[95]

However, Te Rau of Ngati Hangarau gave an account of a meeting that he had with the Tekaumarua at Paengaroa, in the south of the confiscated block, which showed that this group was ready to fight. Taka and other members of Ngati Rangi and Pirirakau were also present at the meeting. When a member of Te Rau's party, Nikora, asked Taka why he had turned his back on his previous desire for peace, Taka replied: 'I have made up my mind to fight.' Nikora told Taka that if he wished to fight he should return to Te Irihanga and leave the southern kainga in peace. To this, Te Kewene, a Tekaumarua leader, responded that the kainga named by Nikora were 'within my prescribed boundaries'. This was probably a reference to an aukati that had been proclaimed by Hakaraia. Te Kewene announced that 'from this day I declare war . . . After Tuesday [15 January] we shall commence to fight and carry out our object'.[96]

Hakaraia had apparently chosen 15 January as the date for an attack on Tauranga. Clarke reported that the Tekaumarua had brought a letter to Hakaraia from King Tawhiao, which said: 'This sick man has recovered, he will soon move his feet, the sword is unsheathed.'[97] Hakaraia had previously not committed himself, but Tawhiao's intervention may have persuaded him to fight.[98] The expected attack did not take place, but it emerged that Hakaraia had imposed an aukati in the south of the confiscated block. A military settler named Albert Campbell was killed around 7 January, between Waimapu and Oropi, probably because he crossed the aukati to go to his section. It was also reported that Maori were afraid to cross the aukati, and that any Pakeha or Queenite Maori who did so would be killed. Campbell was

95. Mackay to Richmond, 10 January 1867, AJHR, 1867, A-20, pp 40–41 (doc M9(a))
96. Statement of Te Rau, 13 January 1867, AJHR, 1867, A-20, p 42 (doc M9(a))
97. Clarke to Richmond, 8 January 1867, AJHR, 1867, A-20, p 38 (doc M9(a))
98. Document K25, pp 66–67

Fig 11: Officers' mess, Te Papa, circa 1867. Photographer unknown. Reproduced courtesy of the Alexander Turnbull Library (PAColl 7806-2-2).

described by researcher John Koning as the first casualty of the Tauranga bush campaign, though his death was not discovered before the fighting had started across the Wairoa River.[99]

The Government decided that the time had come for more forceful action. Threats against the surveyors working between the Wairoa and the Waimapu Rivers were believed to be part of a deliberate plan to provoke conflict. The surveying of the confiscated block had stopped, and both Pakeha and pro-Government Maori had withdrawn from outlying settlements.[100] Haultain returned to Tauranga, and on 17 January troops occupied the Omanawa redoubt in preparation for an expedition to capture Taka, Te Kewene, and others held responsible for 'outrages upon the surveyors'. A warrant was issued for the arrest of these men, who were believed to be at Te Irihanga, Whakamarama, and Waiwhatawhata.[101]

On 18 January, the officer commanding at Omanawa, Captain Henry Goldsmith, somewhat prematurely led a patrol across the Wairoa River. As they approached Te Irihanga they came under fire from Maori, whereupon the troops shot back. The Maori retreated, and Goldsmith's men pursued them until they reached the dense bush, whereupon the troops withdrew. Goldsmith's superiors did not approve of this unauthorised expedition, and on his

99. Document B2, p 39; doc M9, p 199; Clarke to Richmond, 28 January 1867, AJHR, 1867, A-20, p 43 (doc M9(a))
100. Document M9, pp 195, 198–199
101. Clarke to Richmond, 28 January 1867, AJHR, 1867, A-20, pp 42–43 (doc M9(a))

return Goldsmith was arrested and severely reprimanded.[102] In moving too soon, Goldsmith and his men had provoked the first shots of the bush campaign, but by that stage it was unlikely that armed conflict could have been avoided in any event. Neither side was willing to back down.

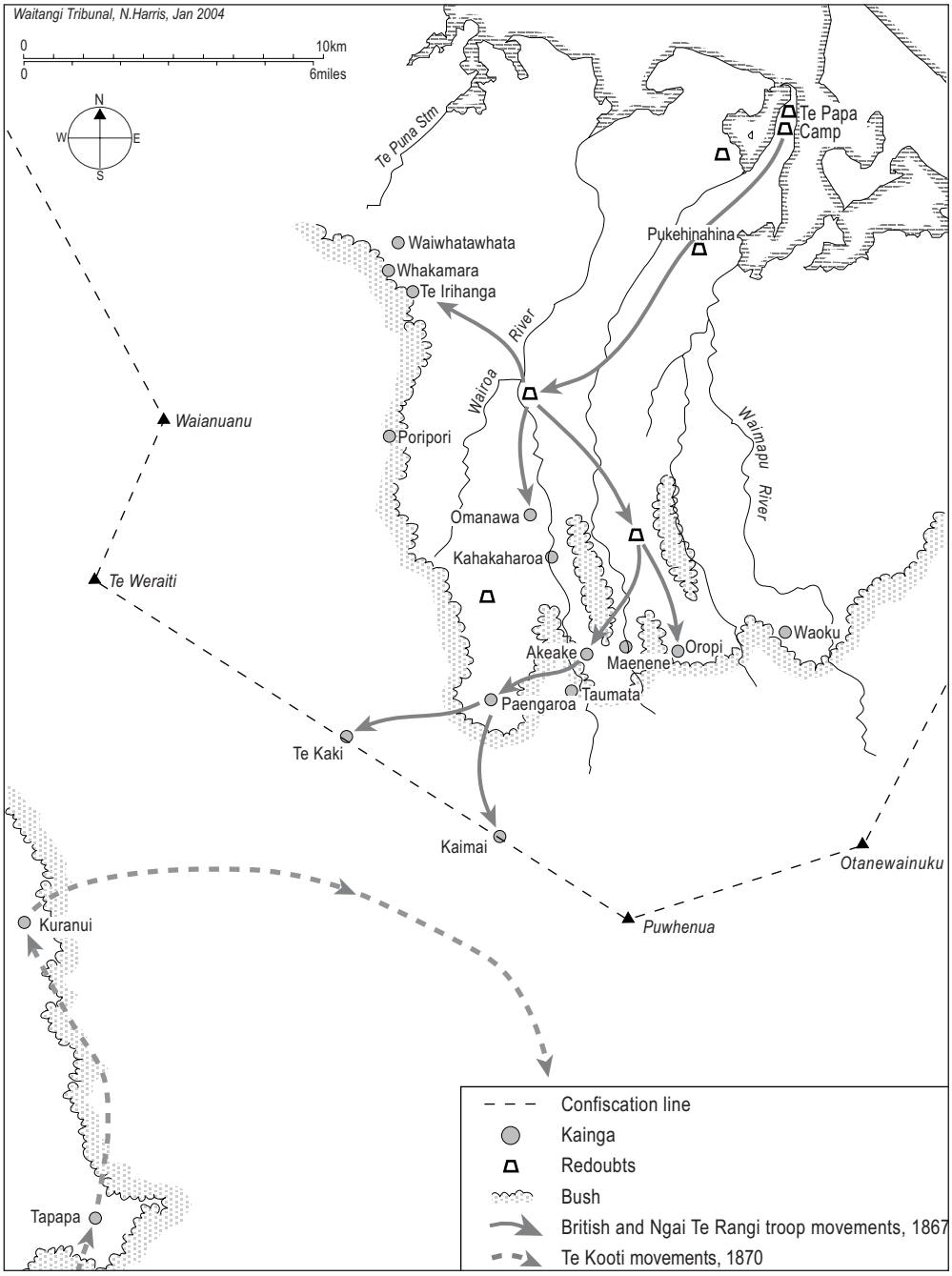
9.5.2 Conduct of the bush campaign

We do not intend to provide a detailed account of the fighting which took place over the following months.[103] The pattern for the conflict was set by an attack on Te Irihanga on 22 January by a combined force of militia, volunteers, and Ngai Te Rangi. The settlement was quickly captured. The attacking force then set about burning all the whare, destroying as much as possible of the cultivations, and seizing the livestock. Next, the Government force moved on to Waiwhatawhata, which it found abandoned. This kainga, too, was destroyed. On the way back to Omanawa, they accidentally travelled by way of Whakamarama, where a battle ensued which ended with Maori dispersing into the bush. Once again, the whare and part of the cultivations were destroyed. The cultivations around all three kainga were so extensive, however, that according to Haultain only a small part of them could be destroyed. From Whakamarama, the Crown forces returned to Omanawa. Although the expedition was considered a success, it had, as Koning pointed out, failed to achieve its supposed objective of apprehending those responsible for disrupting the survey.[104] Messages were left in the destroyed kainga explaining the reason for sending in the military and calling on the alleged offenders to surrender. Tata and Taka were said to have responded that they would never surrender and would drive the Pakeha into the sea.[105]

In late January, the Government force was augmented by some 200 Te Arawa recruited by William Mair. Mair was instructed to begin by destroying the cultivations of Hakaraia's people around Te Puke then to push through to Oropi. The Te Arawa force destroyed Hakaraia's pa at Kenana, where they found most of the equipment taken from the surveyors at Oropi.[106] No resistance was offered, Hakaraia and his people having abandoned their homes and gone to the southern part of the confiscated block. Kainga here were also attacked and destroyed by Arawa and Crown forces in the following week, but most of the occupants escaped. Prisoners captured in the fighting revealed that Hakaraia's force numbered only 59 men.[107]

---

102. Document A2, pp 119–120; doc B2, pp 41–42; doc M9, pp 201–202
103. More detailed accounts of the bush campaign can be found in doc A2, ch 7; doc B2, chs 6–8; doc M9, ch 10; see also the useful chronology in doc N11, pp 161–163.
104. Document B2, pp 43–45; doc M9, pp 202–205
105. Clarke to Richmond, 28 January 1867, AJHR, 1867, A-20, pp 43–44 (doc M9(a))
106. Haultain to Mair, 25 January 1867, AJHR, 1867, A-20, p 45 (doc M9(a)); doc M9, p 208
107. Clarke to Richmond, 10 February 1867, AJHR, 1867, A-20, p 46 (doc M9(a))



Map 17: Bush campaign

Through the rest of February and into March, colonial troops and their Te Arawa allies continued to destroy kainga and cultivations around the fringes of the bush in the south of the confiscated block and in the west around Whakamarama, where they spent three days destroying extensive cultivations. A skirmish on 3 March 1867 seems to have been the last engagement in the Tauranga district; thereafter, hostilities moved out of our inquiry area to

Rotorua, where Hakaraia led attacks on pro-Government Te Arawa.[108] In early March, the surveying of the confiscated block resumed under military protection, but it stopped again soon afterwards because the attack on Rotorua meant that troops could no longer be spared to provide an armed guard for the surveyors.[109] The situation at Tauranga was far from settled, and it was still considered unsafe to travel far beyond Te Papa. In early March, Haultain reported that the 'HauHaus' had returned to all the kainga from which they had been driven.[110]

While Tauranga could hardly be said to be at peace, the bush campaign was over, having lasted for some two months. The fighting had been sporadic, taking the form of relatively brief skirmishes with little loss of life on either side.[111] It is likely that, while the men were fighting, the women and children were sheltering in traditional places of refuge in the more remote parts of the bush, such as at the place known as Te Whare Tangata, a safe haven located by the Mangapapa Stream.[112] On the Pai Marire side, there seem to have been fewer than 100 men in arms; one militia veteran was told years later by one adherent that the Government force (numbering some 800 imperial, colonial, volunteer, and allied Maori troops) had faced a mere 50 or 60 'rebels'.[113] Nor were many prisoners taken by the Government forces, and the declared aim of the campaign – the arrest of those Maori held responsible for halting the surveys – was a complete failure.

Unable either to apprehend the enemy or to defeat them in battle, the Crown forces instead initiated a policy of razing kainga believed to be the homes of the 'Hauhau'. Even this strategy was not entirely successful, since the cultivations were so large that they could not be completely destroyed, and it was not long before some of the inhabitants of these settlements returned home. Nevertheless, the kainga lost a considerable quantity of valuable food.

9.5.3 Continuing tension at Tauranga

From March through to June 1867, the situation at Tauranga remained tense and unsettled, with Crown officials still expecting further attacks from the Pai Marire force. This sense of insecurity was increased when the imperial troops of the 12th Regiment departed for England in early April. Clarke reported that he had information from pro-Government Maori that an assault on Te Papa was planned as soon as these troops left Tauranga, so Te Arawa reinforcements were brought in to bolster the militia and volunteers. As with the other rumours of

108. Document B2, pp 51–55; doc K25, pp 73–74; doc M9, pp 216–218
109. Document B2, pp 54–55, 57
110. Ibid, p 56; doc M9, p 215
111. It is impossible to be precise about the number of dead, but there are few mentions of casualties in the available sources. The *Daily Southern Cross* estimated in March 1867 that eight or nine men had been killed on each side: doc B2, p 56.
112. Documents D24, p 7; doc D24(a), pp 17–18
113. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), p 210

imminent attack that Clarke reported from time to time, no such assault took place,[114] but Clarke remained convinced that the continued existence of Pai Marire belief in the area was a threat to peace and the Crown's authority. He wrote in April 1867 that 'Hauhauism' was not a religion but 'a cleverly contrived political institution in support of the Maori King'. He believed that the leaders of Pai Marire commanded the unquestioning obedience of their followers and had as their object 'ridding the "New Canaan of the Samaritans"' (ie, ridding New Zealand of Pakeha). In Clarke's view, therefore, 'until Hauhauism and Kingism are both put down, with a strong hand if need be, we shall not have permanent peace'.[115]

Despite these views, Clarke was still willing to talk to Pirirakau and their allies. At the end of April, Tauranga Maori gathered for the tangi of Tomika Te Mutu. A man called Te Pura, who was related to Pirirakau by marriage, reported that he had enountered the Pirirakau group, and that Taka had said that they would never come in. This report 'greatly disgusted the Ngaiterangi', who had believed that Pirirakau would welcome an opportunity to come in. Clarke, however, told Ngai Te Rangi that he was 'quite prepared to listen to anything the Pirirakau had to propose' and would forward their proposals to the Government. The Governor did not wish to prolong the conflict, Clarke said, and 'the door was always open'. He would not discourage any Ngai Te Rangi attempt to 'induce these foolish people to surrender, as the Government [was] anxious to spare life'. Te Puru also reported that a strong force of Pirirakau and their allies was gathered at Whakamarama, while Hakaraia was said to be at Kaimai with a force of Ngati Raukawa, Ngai Tamarawaho, Ngai Te Ahi, Ngati Haua, and Waikato.[116]

The Ngai Te Rangi chiefs persuaded Te Puru to take a letter to the Pai Marire party calling on them to surrender. When Te Puru met with a group of Pirirakau, Ngati Porou, and others, he was told that they would submit only if King Tawhiao, under whose orders they were acting, did so first. Taka again said that he would not submit and declared: 'We shall yet conquer.' Te Kewene then announced that Maori around the country had risen, and that 'we will not be satisfied until our fires burn by the sea side. We cannot look upon the white skin. If they are driven away it will be well.' Tata spoke in a similar vein, saying that 'nothing short of the destruction of the Pakeha would satisfy him'.[117]

However, Taka and Pirirakau appear to have modified their uncompromising position soon after, probably as a result of a change of policy on the part of Tawhiao. It was reported in early May that Tauranga supporters of the King had been told to come to terms with the Government because they could expect no more assistance from the Kingitanga. Tawhiao had also called a huge meeting to discuss questions of peace and war.[118] In May 1867, members of Ngai Te Rangi and Te Arawa met with Whitaker at Te Papa, where they reaffirmed their

114. Document A2, p 132; doc M9, pp 219–220
115. Clarke to Richmond, 24 April 1867, AJHR, 1867, A-20, p 57 (doc M9(a))
116. Clarke to Richmond, 29 April 1867, AJHR, 1867, A-20, p 65 (doc M9(a))
117. 'Statement Made by Te Puru of a Visit to Te Pirirakau', 1 May [1867], AJHR, 1867, A-20, p 66 (doc M9(a))
118. Document M9, p 228; Clarke to Richmond, 12 May 1867, AJHR, 1867, A-20, p 66 (doc M9(a))

loyalty to the Crown. After the meeting, three Ngai Te Rangi chiefs went to talk to the Pai Marire group at Waiwhatawhata. When a member of Ngati Porou said that they would never surrender, Taka intervened, telling him to stop that kind of talk and saying: 'If you do persist, we will bury all of the Ngatiporou here on this hill.' Taka, Tata, and others said that they were willing to meet Whitaker at Te Papa, but when they were told that Whitaker might already have returned to Auckland, they declined to go in, for fear of being arrested.[119]

At the beginning of May, the Defence Minister instructed Colonel Phillip Harington, the officer commanding the colonial forces at Tauranga, to ascertain the number and position of hostile Maori in the district. If a 'rebel' force was found at Whakamarama, Harington was to send an expedition of militia and Te Arawa to dislodge them. Harington consulted Clarke, who understood that such a force had recently gathered at Whakamarama and who recommended that an expedition be sent to destroy their supplies. But Harington declined, saying that he lacked clear evidence of the presence of 'Hauhaus' at Whakamarama. He was reluctant to renew hostilities, pointing out both that there had been no attacks on settlers since the departure of the imperial troops and that the Kingitanga meeting was in the midst of deciding whether or not to continue fighting. Though Haultain disapproved of Harington's decision not to send the expedition, no further action was taken.[120]

In June, another report circulated that hostile Maori were preparing to attack Tauranga. Captain Goldsmith, now the commanding officer at Tauranga, was directed to investigate in consultation with Clarke and, if necessary, to send troops to expel the 'rebels'.[121] Goldsmith personally visited the inland villages and sent a scout to the settlements west of the Wairoa (not wishing to cross the river himself lest this be seen as a provocation). He concluded that:

> the only place on our Frontier in which Natives are present is at Whakamarama; these are a small party who are engaged removing into the interior the corpses of their countrymen who had been buried at or near Whakamarama. With this exception not one openly hostile Native is on our Frontier.[122]

Goldsmith reported that Clarke was in complete agreement with this view. Clarke had been told that Tawhiao had ordered the suspension of hostilities for eight months, during which time 'all hostile Natives were to withdraw from Tauranga'. Fighting was to recommence at Tauranga only at the end of this period (although this in fact never happened). Clarke's sources had confirmed that all hostile Maori had in fact left the district.[123]

119. *Daily Southern Cross*, 20 May 1867 (doc B2, pp 59–61)
120. Document A2, pp 135–136; doc M9, pp 224–227
121. Document M9, p 227
122. Goldsmith to Haultain, 20 June 1867, Le 1 1867/120, ArchNZ (doc M9(b), p 190)
123. Clarke to Richmond, 12 June 1867, AJHR, 1867, A-20, p 67 (doc M9(a))

9.6 The Aftermath

The Tauranga district became more settled after mid-1867. In July, Mackay wrote to Pirirakau and other Maori living inland to invite them to attend a meeting of the tribes at Motuhoa. The purpose of the meeting was to 'ata whakarite i nga raruraru o tenei whenua' (carefully sort out the troubles of this land).[124] Mackay's invitation shows that the Crown was still willing to talk to the 'Hauhaus' despite the recent conflict with them. The Motuhoa meeting, which went ahead without the participation of 'unsurrendered rebels' such as Pirirakau, discussed arrangements for the return of lands not included in the confiscated block and the Te Puna–Katikati purchase (see ch 10).[125]

In August, it was still considered unsafe for surveyors to work on the confiscated block without an armed escort, which the commanding officer at Tauranga refused to provide. Instead, it was decided to attempt the survey of the Te Puna–Katikati block. By early October, the surveyors had started work west of Te Puna Stream, district surveyor Henry Skeet having reached an agreement with Pirirakau that they would not interfere. In return, Skeet promised not to cut survey lines through Pirirakau settlements in the Kaimai Range.[126] Pirirakau said that they would not launch any unprovoked or surprise attacks on unarmed surveyors, 'not looking upon surveyors as soldiers but simply as peaceful workers'.[127] But it was a somewhat different story in the confiscated block, where surveying resumed early in 1868. In April and May of that year, surveyors subdividing sections around Paengaroa were warned by some Maori to stop their work, and an aukati was declared. Despite this, by June survey work in the confiscation district was largely complete, and the survey office was closed by the end of the year.[128]

In the years immediately after the bush campaign, many of those who had fought against the Government took refuge at kainga west of the Kaimai Range. It was to those kainga that the prophet Te Kooti and his followers went briefly in January 1870, much to the alarm of the Tauranga settlers. Hakaraia had aligned himself with Te Kooti, but it is unclear which other Maori of the Tauranga region supported him. Wiremu Tamihana's son, Tana Taingakawa, and King Tawhiao both made it clear that they did not want Te Kooti to bring war to the area once again, and their opposition probably prevented some Kingitanga Maori from joining Te Kooti. There was a skirmish in early February between Te Kooti's party and a Government force south of Paengaroa, but shortly thereafter Te Kooti and his people went to Rotorua, and

124. Unsigned letter (in Mackay's handwriting) to Rawiri Tata and others, 3 July 1867, Tauranga confiscation file 1/6, DOSLI, Hamilton (RDB, vol 124, p 47,832)

125. Document A22, p 25

126. Document B2, pp 62–64; Jenks, pp 37–38

127. Skeet to Clarke, 9 October 1867, outward letter book, Survey Office, Tauranga, MS18, Tauranga Public Library (doc B2, p 64)

128. Document B2, pp 64–65; Jenks, pp 40–42

then on into Tuhoe territory. In March 1870, Hakaraia was killed when Crown forces attacked Te Kooti's supporters in a pa to the south of Opotiki.[129]

By 1870, bush kainga within the confiscated block had been reoccupied, and the following year Pirirakau returned to Te Puna. This was part of a wider movement of Maori from the bush settlements to the coast.[130] In January 1871, a group of Pirirakau and Ngati Hinerangi wrote to the Native Minister, Donald McLean, explaining that they had never accepted money for their land in the Te Puna block sold by Ngai Te Rangi. They asked for a payment in exchange for their claims to the block and added: 'Kia mohio koe e te Makarini e whakaaetanga tenei na matou kia koutou ara kia te Kawanatanga'. Although this was translated as meaning that they accepted the authority of the Government, it may have indicated that they now accepted the Government's purchase of Te Puna–Katikati. However, as we noted in chapter 7, not all of Pirirakau were represented in the final deed of sale. The letter ended on a conciliatory note, stating that the evils of the past were finished and that it was now a day of peace ('he rangi marire tenei').[131]

Though armed conflict did not break out again within our inquiry area, Pirirakau and others held fast to their Pai Marire beliefs and their Kingitanga allegiance, and this was a continuing source of tension for some years to come. As Tauranga returned to peace, and the surveys of the confiscated block and the Te Puna–Katikati purchase were completed, Pakeha settlement was able to expand beyond the confines of Te Papa.

With the end of military conflict, the Pakeha population began to grow. In 1870, there were 257 Pakeha settlers in the Tauranga district, 246 of whom were military settlers. By 1874, there were 579 Pakeha in the town of Tauranga alone, and by 1878 the total Pakeha population of the Katikati and Tauranga districts and the township had reached almost 1400.[132] By the end of the decade, Pakeha outnumbered Maori, whose population in the district was estimated at between 1000 and 1500 in the early 1870s.[133] With the Pakeha population steadily increasing, Clarke could confidently write in 1877 that the Government must make clear to Pirirakau its determination not to surrender an inch of purchased or confiscated land.[134]

9.7 Claimant and Crown Submissions

The implementation and enforcement of the raupatu, through the surveying of the confiscated block and the resulting bush campaign, were the subject of submissions from both the

129. Document A2, pp 138–139; doc A47, pp 116–117; doc B2, p 66; doc K25, pp 76–77; Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1997), pp 202–205

130. Document A2, p 186; doc A47, p 118; doc B2, p 67; doc F3, pp 84–87

131. Te Kepa Ringatu and others of Pirirakau and Ngati Hinerangi to McLean, 11 January 1871, MA13/89, ArchNZ (RDB, vol 78, pp 29,890–29,897)

132. Document A2, pp 178, 185, 191

133. Document M9, pp 248, 251; see also the Pakeha and Maori population figures in doc A57, p 289

134. Document A2, p 190

claimants and the Crown. We now summarise the closing submissions on these issues, before setting out our own views and findings in the final sections of this chapter.

9.7.1 Claimant submissions

In the joint closing submission on behalf of several claimant groups, counsel maintained that uncertainty regarding the location of the confiscated block and the terms of the agreement reached at the August 1864 pacification hui caused ongoing difficulties in Tauranga.[135] Counsel stated that the situation remained confused until the meeting with Grey and Whitaker in March 1866, when 'a very blunt, clear message was given to Tauranga Maori, that . . . unless they agreed to 50,000 acres being taken in one block, they faced the risk of confiscation of all their lands'.[136]

Counsel also gave weight to Mair's recollection that Tauranga Maori were threatened with force of arms if they did not agree to land west of the Wairoa River being included in the confiscated block. In discussing the reason for the survey being extended across the Wairoa River, counsel emphasised Frederic Utting's statement about the lack of sufficient 'good agricultural land' between the Waimapu and Wairoa Rivers, although they did acknowledge that Maori opposition to surveying further to the south was also a factor.[137]

Counsel submitted that the Crown should have anticipated that there would be opposition to surveying west of the Wairoa because Crown officials had had ample warning of this. Until the end of 1866, opposition to surveying west of the Wairoa River was passive.[138] In counsel's view, the Crown's failure to hold an inquiry into surveying west of the Wairoa, as promised by Grey to Wiremu Tamihana, led inevitably to conflict.[139] Counsel submitted that the outbreak of violence in 1867 'can be laid fairly at the feet of the Crown'. In particular, the Tauranga bush campaign, counsel argued, was the outcome of a series of Crown actions that began with the Crown's decision to invade the Waikato in 1863.

Counsel acknowledged that the arrival of the Tekaumarua in Tauranga 'seemed to bring with it a hardening of opposition to the survey'.[140] However, they saw the Crown's dispatch of the 1st Waikato Regiment to Oropi as being the prime cause of the bush campaign, with Captain Goldsmith's expedition across the Wairoa to Te Irihanga an additional aggravation. According to counsel, 'those Maori who were in occupation of Te Irihanga must have viewed the arrival of 40 colonial troops on their doorstep, unannounced, as a declaration of warfare'.[141] Counsel portrayed the bush campaign as a conflict 'characterised by Crown

135. Document N11, p 144
136. Ibid, p 148
137. Ibid, pp 148–149
138. Ibid, p 150
139. Ibid, pp 151–152
140. Ibid, p 158
141. Ibid, pp 159, 161

aggression against Maori. Attacks were made on Maori in their kainga and [were] followed by looting and destruction of cultivations and buildings.' There were no outright attacks by Maori on Crown positions, counsel submitted.[142] Throughout the campaign, Maori were heavily outnumbered, and consequently 'any rumoured attack on Te Papa or any of the military redoubts was simply fantasy and a rationalisation to make pre-emptive strikes against Maori positions'.[143]

Counsel concluded that the bush campaign was part of a continuing contest for authority between the Crown and the Kingitanga, and was a result of Crown aggression against the Kingitanga both in the Waikato and in Tauranga. By attacking Maori, the Crown 'waged war on its own citizens', while Maori primarily adopted defensive positions. Counsel submitted that these actions of the Crown were in breach of the article 2 guarantee that the Crown would protect 'Maori, their lands, estates and forests to the fullest extent practicable'.[144]

A number of closing submissions on behalf of particular claimant groups followed similar lines to the joint submission summarised above.[145] Counsel for Pirirakau submitted that they were 'patriots' fighting to defend their rangatiratanga, while counsel for the Wairoa hapu argued that the Crown instituted an 'unreasonable and indiscriminate' scorched-earth policy in the bush campaign and that Maori were entitled to defend themselves against such Crown aggression.[146]

The closing submissions for the Waitaha and Ngai Tamarawaho claimants had a somewhat different focus. On behalf of Waitaha, counsel submitted that Hakaraia's support for Ngati Ranginui during the bush campaign was motivated by both kinship and Kingitanga ties. This involvement made Waitaha military targets and led to the attack on Te Puke and to subsequent attacks on Hakaraia and his supporters in the bush kainga within the confiscated block.[147]

The closing submission for Ngai Tamarawaho argued that the Crown began the bush campaign by attacking Ngati Ranginui and Waitaha kainga, apparently on the basis of unfounded rumours concerning possible threats. Counsel stated that the Crown's response to the interruption of the surveys was disproportionate and unnecessarily harsh. Ngai Tamarawaho's resistance to the surveying, counsel maintained, was not related to the surveyors crossing the Wairoa River but was due to the fact that all their land lay within the confiscated block between the Waimapu and Wairoa Rivers – Ngai Tamarawaho had never accepted that their land between the two rivers was to be taken.[148]

142. Document N11, p 162
143. Ibid, p 164
144. Ibid, pp 165–167
145. See doc N3, p 10; doc N9, pp 23–27; doc N14, pp 12–17; doc N15, pp 12–13; doc N17, pp 15–17; see also doc P8, pp 36–40
146. Document N9, p 27; doc N14, pp 16–17
147. Document N22, pp 8–10
148. Document N23, pp 21–22, 28–29

9.7.2 Crown submissions

In closing submissions, Crown counsel acknowledged that the delay in setting the boundaries of the confiscated block 'appears to have caused problems', and that some Maori may not have understood, at the time of the pacification hui, 'the quantity of land (in terms of total acreage) that would be kept by the Crown'. The Crown did not accept, however, 'that it materially altered the terms agreed at the hui or that it acted either unreasonably or in bad faith in resolving the boundaries issue'. In counsel's submission, Grey's threat of force came after 'it appeared to him that Tauranga Maori were seeking to breach the terms of peace'. The decision to include land west of the Wairoa River in the confiscated block was consistent with those terms, in the Crown's view.[149]

Crown counsel argued that the Government's response to the initial protests against the surveying was not violent. The situation was inflamed, however, by 'the intervention of outsiders, namely a section of Ngati Porou from the Hauraki district, who altered the position of protest into one of open threats against the lives and property of the surveyors'.[150] The Crown responded to those threats by withdrawing the survey parties and attempting to mediate the problem, and by stressing that the initial deployment of troops in November 1866 was for the protection of the survey parties only. However, this was followed by a reported attempt to murder surveyors in December 1866 and a declaration of war by Taka and Te Kewene in January 1867. The Crown then sought to apprehend those who posed a threat to the peace and security of the district, and when the apprehension of key leaders proved impossible, 'a counter-insurgency campaign developed'. Crown counsel submitted that Government forces took a 'measured and discriminate' approach during the bush campaign:

> Crown operations were restricted to destroying kainga suspected of being used as bases by those Maori hostile to the Government, and destroying a number of large cultivations (abnormally large for small inland populations), suspected of being intended to support a considerable hostile force in the Tauranga district. The hostility of these groups was borne out by their Waikato-supported attack on Rotorua in April 1867. The peace that was gradually established after this time, owed no small amount to the Crown's decision not to pursue the use of force any more than was necessary. Overall the crown's actions in the Tauranga Bush conflict were limited to what was a reasonable and necessary response to an openly hostile presence in the region, to threats of murder and evident plans for attacking settlers and peacefully disposed Maori.[151]

149. Document 02, p 56
150. Ibid
151. Ibid, p 57

9.8 Findings of Fact

The positions of the claimants and the Crown on the lead-up to and conduct of the bush campaign are clearly at odds. We therefore make findings of fact on the disputes relating to the location of the confiscated block (sec 9.8.1), the conflict over the surveying of the block (sec 9.8.2), and the conduct of the bush campaign (sec 9.8.3). Lastly, we make findings on the Treaty breaches alleged by the claimants in their submissions (sec 9.9). A finding on how the location of the confiscated block, coupled with subsequent returns of land, affected the various Tauranga hapu is left until chapter 10 (see sec 10.8.2).

9.8.1 The location of the confiscated block

The surveying of land within what was to become the confiscated block began in September 1864, only a month after the pacification hui, and continued until April 1865. However, it was not until May 1865 that an Order in Council proclaimed the confiscation of the Tauranga district under the New Zealand Settlements Act 1863. Until May 1865, therefore, the land still legally belonged to Maori, and there was no lawful authority for surveying to take place there. The confused and uncertain situation was exacerbated by the activities of speculators, who arranged private purchases from Maori before the confiscation was implemented. When the survey began, there was almost immediate protest from Wiremu Tamihana, acting on behalf of some Tauranga Maori.

Following the Order in Council, there was a further delay in determining exactly where the confiscated block would be located. In previous chapters, we have already traversed the divergent Maori and Crown understandings of the location and size of the block that the Government would retain (see secs 5.2.6, 9.3). It was not until Grey and Whitaker met with Tauranga Maori in March 1866 that this question was clarified and answered. At that meeting, Maori acquiesced in the Government's demand, albeit under some duress. Grey threatened to retain the whole district if Maori did not agree to the location and size of the confiscated block. He also threatened to take the land by force of arms, if Mair's account is to be believed. In addition, as was indicated by the *Daily Southern Cross* report, Maori felt intimidated by the location of the meeting at the Te Papa military camp and by the arrival in Tauranga of two militia regiments just before the meeting.

Under these circumstances, it cannot be said that Tauranga Maori who attended the March 1866 meeting freely agreed to the size or location of the area of land to be retained by the Crown. Their state of demoralisation was evidenced by Clarke's description of them as having had 'all their bounce . . . taken out of them'. The Crown took advantage of this demoralised state by pressuring Maori into 'agreeing' to the confiscation of 50,000 acres. The Crown also disregarded the interests of those Maori who did not participate in the March 1866 meeting and who continued to assert their right to retain their land in the confiscated block.

9.8.2 Conflict over surveying

Various Tauranga Maori had consistently opposed the surveying of the confiscated block from the time that the work commenced in late 1864, but those who actively opposed it were relatively few in number. They were, however, united by their Pai Marire faith, their Kingitanga allegiance, and their opposition to the confiscation of land belonging predominantly to hapu of Ngati Ranginui. Though it is impossible to be certain about their hapu affiliations – Crown officials referred to them variously as 'Hauhaus', 'Pirirakau', and 'rebel Ngaiterangi' – they apparently included members of Pirirakau and Ngati Rangi in the west, Waitaha in the east, and, between the Wairoa and Waimapu Rivers, Ngati Hangarau, Ngai Tamarawaho, Ngai Te Ahi, and Ngati Ruahine. They were supported by some people from outside the district, including Ngati Porou and Taranaki members of the Tekaumarua, and probably also by members of Ngati Haua and Ngati Raukawa. Despite this, they were a small force and may have numbered no more than 80 fighting men.

Until late 1866, protest against the surveying was passive and was led by Pirirakau (supported and often represented by Wiremu Tamihana). Most of Pirirakau had not surrendered, had not been parties to the Te Puna–Katikati purchase, and had refused to agree to the confiscation of their land. It is likely that the other opponents of the survey were in a similar position, although Taka, at least, had surrendered, resuming his opposition to the Government only when the survey was extended across the Wairoa River. Crown officials, however, had little regard for the autonomy of the Ngati Ranginui hapu or for their right to retain their land. Clarke and Mackay believed that Pirirakau and their allies belonged to 'the *inferior* hapus of Ngaiterangi', and that they were bound by the 'agreement' reached with Ngai Te Rangi chiefs.

There is no evidence that those Maori who opposed the surveying and confiscation had any hostile or warlike intent before the latter part of 1866. We have already concluded at section 9.2.3 that Pai Marire was not inherently violent, and even the Government surveyor, Heale, acknowledged in 1865 that Pirirakau and other outlying hapu had adopted Pai Marire 'without any offensive disposition'. Their protests against surveying were peaceful, and Tamihana attempted to mediate on their behalf with the Crown. But officials failed to discuss the matter with him. Had Grey carried out a full inquiry into the extension of surveying across the Wairoa River, and had Clarke and Mackay passed on Rolleston's letter to Tamihana explaining Grey's promised inquiry, it is likely that the conflict that followed could have been avoided.

Once the survey of the confiscated block resumed in May 1866, it soon became apparent that it would be difficult for the Crown to obtain its required 50,000 acres. The eastern boundary had been agreed after some difficulty, as well as an extension across the Waimapu River of 1000 acres. But the southern and western boundaries were disputed; different groups, which we specified above, opposed the extension of the survey into the south of the block between the Waimapu and Wairoa Rivers, or, alternatively, across the Wairoa. The Crown was in the

inevitable position of being likely to offend one group or another in its efforts to secure the full 50,000 acres. To some extent, it managed to offend both sides, since some surveying continued in the south even though the Crown had opted to extend the survey across the Wairoa. The reasons for the Crown's choice are not entirely clear, but it is evident that the land taken across the Wairoa, including the low-lying land to the edge of the Te Puna block purchased by the Crown, was undoubtedly better for settlement than the rugged country in the south of the Waimapu–Wairoa block.

9.8.3 The bush campaign

The intervention of the Tekaumarua in the already tense situation at Tauranga contributed to the resumption of armed conflict.[152] Both claimant and Crown submissions acknowledged that their actions altered the dynamic of the conflict. The Tekaumarua were outsiders who were not fighting in any direct way for their own land; nor did they have anything to lose if their hardline approach led the Crown to punish Tauranga Maori. They inflamed the situation at Tauranga with their threats of violence, and they brought Hakaraia into the fray. The question of whether they were acting under orders from King Tawhiao or whether they were rogue elements sheltering under the mantle of the Kingitanga and Pai Marire need not concern us here. What is clear is that they had not come to Tauranga to spread the original Pai Marire message of peace and that their arrival proved destructive.

For a brief period early in 1867, the Tekaumarua and Hakaraia filled the leadership vacuum among Kingitanga and Pai Marire adherents at Tauranga left by the death of Tamihana. However, they were able to do so only because of the unresolved Ngati Ranginui grievances. The unjust confiscation of Ngati Ranginui land as punishment for supposed 'rebellion', the failure of Crown officials to respect Ngati Ranginui's mana and that of the Kingitanga, and the Crown's evident determination to press ahead with surveying the confiscated block regardless of Ngati Ranginui's protests all provided fertile ground for the advocates of violence. By the end of 1866, Tauranga Maori who had been resisting surveying had allied with the Tekaumarua and had abandoned their previous policy of peaceful protest. Although they are not known to have attacked any survey parties, some of them did threaten surveyors with violence.[153] The Crown felt that it had no option but to respond to these threats, both by providing armed protection for the surveyors and by attempting to apprehend those who were promoting violence.

The war began not in response to threats of violence from the Tekaumarua and their Tauranga supporters but as the result of an unauthorised patrol led by Captain Goldsmith

152. Document N11, p158; doc O2, p56. In February 1867, Mackay reported that Tioriori's Ngati Haua people believed that 'the Ngatiporou' were to blame for the war at Tauranga: see Mackay to Native Minister, 7 February 1867, Tauranga confiscation file 1/1, DOSLI, Hamilton (RDB, vol 124, p 47,540).

153. A surveyor's assistant was apparently captured by Pirirakau in January 1867; his fate is unknown: doc M9, pp 209, 231.

across the Wairoa River that was fired on by the defenders of Te Irihanga. It must have appeared to the kainga's occupants that the military were being used to enforce the survey and confiscation of their land westwards of the Wairoa River.

Then, as the campaign got under way, the Crown forces did not succeed in apprehending individuals who had issued threats and so it carried out collective punishments against kainga that were supposedly being used as bases for hostile Maori. Persistent rumours that a large-scale attack on Tauranga was imminent were used as justification for the Crown's approach. We acknowledge that Crown officials acted on the basis of the intelligence available to them at the time (which suggested that there might be several hundred hostile Maori under arms in the district), but even if the Crown had been justified in relying on such faulty intelligence, only the taking of defensive measures in the vicinity of Te Papa would have been necessary, not the attack on and destruction of inland kainga.

Nor can the fact that extensive cultivations were discovered in the bush be used as an excuse for the destruction. There is no evidence that these cultivations were intended to support a hostile force; in fact, several other explanations are possible. Maori had told Rice in February 1865 that they intended to plant largely at settlements on the edge of the bush because the land there was twice as productive as on the coast. In saying this, Maori were simply confirming that they wished to continue their traditional patterns of mobility and cultivation. It was also reported in February 1867 that cultivations at Akeake had been planted to supply workers on a planned road to Taupo that might pass nearby.[154] As well, it is easy to forget that Maori living in the bush had as much reason to fear that the Crown was preparing to attack them as Crown officials had to fear a Maori assault on Te Papa. The Crown had already shown its preparedness to take aggressive action against Maori in Taranaki, the Waikato, and Tauranga. In March 1866, Grey had told Tauranga Maori that he would take all of their lands if they did not agree to the Government's confiscation plans. The bush cultivations may therefore have been intended to support a defensive campaign in case of attack by Crown forces rather than to support an offensive against those forces.

We acknowledge that Crown officials showed restraint at key points. Despite his hostility towards the 'Hauhaus', Clarke never persecuted the Pai Marire believers on account of their religion, and he did not order the arrest of those who took surveyors' equipment in September 1866. Likewise, in May and June 1867, the officers commanding troops at Tauranga, not wishing to provoke a resumption of warfare, declined to send military expeditions in search of hostile Maori reported to be gathering in the district. It should also be emphasised that, throughout the escalating dispute over the survey of the confiscated block, Crown officials always remained willing to talk to Pirirakau and their allies; only a few months after the end of the bush campaign, Mackay invited them to attend the meeting at Motuhoa. From the middle of 1866, there was no corresponding willingness on the Pirirakau side to talk to the

154. Document F3, p 79

Crown. It must be remembered, however, that all that was on offer to Pirirakau and others of Ngati Ranginui was a share of the Te Puna–Katikati purchase money and the creation of reserves for their use.

9.9 Treaty Findings

9.9.1 The bush campaign

In chapter 6, we found that the confiscation of land by the Crown at Tauranga was in breach of the principles of the Treaty. We will not revisit that finding here. Instead, we restrict ourselves to the more limited question of whether the means by which the Government enforced the confiscation on the ground at Tauranga in the period 1865 to 1867 was in further breach of Treaty principles. Our guiding Treaty principle here is the principle of reciprocity. The question to be answered, therefore, is this: did the Crown, in carrying out legitimate functions of government, temper the use of its sovereign authority with respect for Maori rangatiratanga as required by the principles of the Treaty of Waitangi?

Our finding that the Crown failed to obtain the free consent of Tauranga Maori to the location of the 50,000-acre confiscated block comes as no surprise in light of our conclusions, stated in chapters 5 and 6, that the taking of land at Tauranga was a confiscation and in no way akin to a cession. The Crown enforced the confiscation of this land over the objections of Maori who attended the February and March 1866 meetings with Crown officials and despite the protests of Pirirakau and others when their land was surveyed. Tauranga Maori were forced to accept the raupatu under duress, and those who opposed the Government's confiscation designs were justified in peacefully resisting attempts to have those plans forced upon them.

Having decided to proceed with the survey of the disputed land, the Crown considered that it was justified in providing military escorts for surveyors when threats were made against their lives, and in seeking to apprehend those who had made such threats. We accept that the Crown had an obligation to protect the lives of its servants. However, the Crown's determination to survey disputed areas of the confiscated block – despite peaceful protests by Maori who wished to retain their land – led to the outbreak of violence in 1867. Clarke had previously shown sound political judgement by not inflaming tensions when Pai Marire first arrived in the district. But such a measured and appropriate response was not shown in the decision to take military action against communities harbouring those accused of threatening violence. The way in which the Crown conducted the Tauranga bush campaign went beyond what was required to provide protection to the civilian population (both Pakeha and pro-Government Maori). In addition, the actions of Crown forces in burning villages and destroying cultivations were excessive in relation to the declared aim of the campaign, which

was to apprehend individuals who had interfered with surveys and threatened surveyors working on the confiscated block.

In line with the Ngati Awa raupatu Tribunal's conclusion on a related matter, we accept that the Crown was justified in arresting and trying Maori who murdered a European (or threatened to do so), even in districts where customary law still largely applied.[155] If any such offence at criminal law had been committed by Tauranga Maori, the Crown would have been justified in charging the accused and issuing warrants for the arrest of the person or persons concerned. However, the actions of the Crown at Tauranga in the years 1865 and 1866 had clearly less to do with applying civil or criminal law than with defeating unsurrendered 'rebels' and implementing the confiscation plan. Once the bush campaign was under way, the declared aim of arresting those who had allegedly made threats of violence became wholly incidental to collectively punishing those communities that opposed the Government's attempts to implement the confiscation. Those Maori who resisted attack from Crown forces were not therefore obstructing the Government as it went about its legitimate functions but were merely acting in self defence.

In light of these conclusions, we find that the Crown failed to respect the rangatiratanga of those Maori (predominantly of Ngati Ranginui) who actively opposed confiscation and that it failed to act reasonably towards them, with resulting prejudice in the form of loss of life, property, and land. Once again, the Crown's use of its kawanatanga authority was not constrained by respect for Maori tino rangatiratanga.

9.9.2 Arrest of Hori Tupaea

We now apply these general findings to the particular case of the arrest and detention of Hori Tupaea. Claimant counsel argued that the unjustified arrest and imprisonment of Tupaea was in breach of the Treaty and responsible for the decline in his authority and prestige (see sec 9.2.2). For a start, we note that Tupaea had remained neutral during the Waikato and Tauranga wars, though some of his Te Whanau a Tauwhao hapu had fought against the British troops in both campaigns. So far as we can see from the available evidence, he had not committed any criminal act that would justify his detention. Nevertheless, Crown officials, who were aware of his attempts to collaborate with Tiu Tamihana to establish an aukati in the district, may have had some ground to fear an escalation of violence and may therefore have considered it necessary to arrest him. But they had no ground to detain him without trial. This was also a breach of the principle of reciprocity, whereby the Crown needed to exercise its kawanatanga responsibilities, which included maintaining peace and order, with respect for the chiefly right of tino rangatiratanga.

We also have to consider whether other aspects of the treatment of Tupaea diminished his

155. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 127–128

authority and prestige. Though he had committed no act of disloyalty, Tupaea was required to take an oath of allegiance and to abide by other restrictions before being released on parole. We consider that this treatment did demean his tino rangatiratanga and was therefore in breach of the Treaty.

Whether Tupaea suffered any longer term loss of his authority is not so clear-cut – claimant counsel did not offer any evidence on the matter. In later years, Tupaea remained true to his pledge of loyalty. In 1867, he agreed to the Te Puna–Katikati purchase. He did not take up arms against the Crown in the bush campaign and indeed managed to persuade the Ngati Porou party, which helped to provoke that conflict, to leave the Tauranga district. In 1870, when Te Kooti entered the Tauranga district, Tupaea assured the Pakeha population of Tauranga that he would fight to protect them if need be. He remained prominent in Tauranga affairs until his death in 1881.[156] From this, it is evident that Tupaea remained a prominent Tauranga rangatira until his death. It would seem that his brief detention in 1865 resulted in no long-term loss of his prestige and authority. Therefore, we do not consider that this Treaty breach resulted in prejudice to Tupaea and his descendants.

9.10 Chapter Summary

The main points in this chapter are as follows:

- Tauranga Maori did not freely assent to the location of the 50,000-acre confiscated block. Various hapu of Ngati Ranginui, in particular, were adversely affected by the Government's decision to locate the confiscated block in the heart of their rohe.
- Some members of Ngati Ranginui hapu and Waitaha actively opposed the extension of the confiscated block across the Wairoa River or into the southern bush area. These opponents were united by their Pai Marire and Kingitanga adherence. Their opposition to the survey of the block was initially peaceful.
- In late 1866, threats of violence were made against Government surveyors by some of those opposed to the Crown's confiscation plans. The Government responded with a military campaign in which kainga and crops were destroyed. Several lives were lost on both sides. The Government never made attempts to fulfil the stated aim of this campaign – to arrest those threatening violence.
- Because the campaigns were aimed not at arresting those who had broken the law but at collectively punishing those opposed to Government policy at Tauranga, the Crown was not acting within its legitimate kawanatanga functions. In so doing, it failed to respect the rangatiratanga of those Ngati Ranginui and Waitaha Maori it fought against. In its conduct of the bush campaign, the Crown was therefore in breach of the Treaty.

156. Hori Kingi Tupaea, DNZB, vol 1, pp 556–557

CHAPTER 10

THE 'RETURN' OF CONFISCATED LAND

10.1 Introduction

In the previous chapter, we discussed the setting aside of a confiscated block of 50,000 acres located in the center of the Tauranga district. The retention of this block was regarded by the Crown as fulfilling Governor Grey's promise at the pacification hui of 5 and 6 August 1864 to retain one-quarter of the confiscated district and return the rest to 'Ngaiterangi'. In this chapter, we examine how this remaining land was returned to Tauranga Maori. We also discuss the setting aside of more than 16,000 acres of 'reserves' in the confiscated and Te Puna–Katikati blocks.[1] Several claimants in this inquiry have alleged that the return of land and the allocation of reserves were undertaken in a way that favoured Ngai Te Rangi over other iwi, and we consider that important issue in this chapter. Related to this is the need to establish just what happened in respect to the return of land in particular circumstances: whether land was returned to those who formerly had customary title or awarded to those the Crown felt obliged to reward for their loyalty, and whether losses in the confiscated block were compensated for by the allocation of land from elsewhere in the district.

The confiscation of the Tauranga district under the New Zealand Settlements Act 1863 meant that all the land in the district, apart from that already granted by the Crown – such as the CMS block at Te Papa – became Crown land unencumbered by Maori customary title. The return or awarding of land in the district to Maori was mostly by Crown grant to one or more individuals. In a few instances, land was set apart as an endowment or a 'native reserve' under the Native Reserves Act 1856. The automatic extinguishment of Maori customary title under the New Zealand Settlements Act and the substitution, without Maori agreement, of individual titles for most of the land awarded or returned were said in claimant submissions to have been in breach of the principles of the Treaty of Waitangi. We also consider this matter later in the chapter.

1. We agree with the evidence presented to this Tribunal by Robert Hayes that most of the awards in Te Puna–Katikati and the confiscated block were not technically 'reserves' because they were, usually, neither permanently inalienable nor administered under one of the Native Reserves Acts. However, we use this term generically throughout this chapter because the term was used widely at the time and ever since to refer to blocks awarded to Maori in the 50,000-acre block and within Te Puna–Katikati. In this sense, 'reserves' in this chapter and chapter 11 means land allocated to Maori out of Crown purchases or other acquisitions, regardless of its legal status: see doc M11, pp 8–11.

10.1

In this chapter, we refer to the 'individualisation of title' or the 'individualisation of tenure' at Tauranga. By these terms, we mean the change of Maori land tenure at Tauranga from collective customary title to individual (but usually undivided) shares in land. This did not mean that each individual named in a Crown grant was awarded a defined piece of land. Rather, they were awarded a relative interest in a block of land as tenants in common (where a block was granted to more than one awardee). This return of land in multiple ownership had important consequences for the fate of the 'returned' land, which we discuss in the next chapter. Though land was sometimes returned for the intended use of a hapu or granted to individuals in trust for a hapu, no land was returned to hapu as collective entities. In all cases, title was granted to named individuals.

The claimants also submitted that the Crown carried out the awarding or return of land in an arbitrary fashion. The Crown did not use the Compensation Court, as required under the New Zealand Settlements Act 1863, to consider claims by Tauranga Maori that they were not 'rebels' and were therefore entitled to compensation for the confiscation of their land. Instead, it relied on local officials – initially, civil commissioners and later, under the Tauranga District Lands Act 1867, land commissioners – to arrange and allocate reserves and to apportion returned land. Their proceedings were not subject to scrutiny or legal appeal and were indeed shrouded in mystery: they were not obliged to keep notes and issue judgments, and usually they did not. The claimants have argued that such procedures were in breach of their rights under the Treaty.

Since there is no full record of the proceedings of the commissioners of Tauranga lands, there is limited scope for us to make conclusions on how particular awards were made. However, for most blocks there are detailed records listing the individuals to whom they were awarded. These lists were carefully worked through by Professor Evelyn Stokes for her two-volume report 'The Allocation of Reserves for Maori in the Tauranga Confiscated Lands'. The first of these volumes provides a detailed analysis of the confiscation and return of lands, and it is supplemented by numerous tables and maps. The second volume consists of lists of owners for all blocks awarded or returned in the confiscation district. Stokes originally prepared these to provide the basis for a roll of beneficiaries for the Tauranga Moana Maori Trust Board, which was established under its eponymous 1981 Act (which we discuss in chapter 12). We make much use of her report in this chapter, although in many instances we refer the reader to it for further detail rather than unnecessarily repeat it here.

This chapter is divided into two parts. In the first, we deal with the awarding of reserves in the confiscated and Te Puna–Katikati blocks, while in the second we consider the return of land in the remainder of the confiscation district. At the end of the first part, we summarise claimant and Crown submissions and make findings of fact relating to the allocation of reserves. Then, at the end of the second part, we make Treaty findings on issues relating to the awarding and return of land throughout the confiscation district.

Now, before we proceed to the first part, we briefly examine the legal background to the

awarding and return of land, and describe the situation that existed in Tauranga while the allocations of land were being made.

10.2 Background to the Allocation of Reserves and the Return of Land

10.2.1 The legal background

The commissioners of Tauranga lands were appointed under the Commissioners Powers Act 1867, which conferred general investigatory powers on any 'board or commission appointed or issued . . . by the Governor in Council'. Sections 1 to 3 of the Act gave such boards or commissions the power to call and examine witnesses under oath, receive evidence, and fine those who refused to appear as witnesses. Sections 4 and 5 entitled witnesses to receive payment for costs involved in appearing before the board or the commission and made them guilty of perjury if they gave false evidence. The Act offered scant detail on how 'commissions' were to operate. However, it did confer on them some powers akin to those of a court. In fact, in the 1880s, the commissioners of Tauranga lands were frequently referred to as the 'Commissioner's Court'.

After the commissioners allocated a reserve or a block of returned land at Tauranga, the awardees were eventually issued a Crown grant for the block. As far as we can ascertain from the evidence presented to us, reserves in the confiscated and Te Puna–Katikati blocks were usually awarded as Crown grants under the authority of the New Zealand Settlements Act 1863, while land in the remainder of the confiscated district was returned under the Tauranga District Lands Act 1867.

In chapter 6, we discussed the New Zealand Settlements Act (and its amendments) and the Order in Council of 18 May 1865, which together provided the legal basis for the Tauranga confiscation. We also discussed the several ways in which the Government failed to adhere to the terms of the 1863 Act, including its decision not to use the Compensation Court at Tauranga. Instead, as we explained, the Government decided to continue to use civil commissioners Mackay and Clarke, who had already begun to arrange the allocation of reserves in the Te Puna–Katikati blocks and the confiscated block.

The need to validate these arrangements was probably one of the key reasons why the Government enacted the Tauranga District Lands Act in 1867. Section 2 of that Act validated all 'grants awards contracts or agreements of or concerning any of the land described in the Schedule . . . made or purporting to have been made' in accordance with the Order in Council of 18 May 1865 or the New Zealand Settlements Act and its amendments. The Order in Council had provided for Grey's promise that three-quarters of the confiscated land would be set aside for 'such persons of the tribe Ngaiterangi as shall be determined by the Governor, after due enquiry shall have been made'. Section 3 of the Tauranga District Lands Act defined that 'due enquiry' as being 'deemed and taken to extend to inquiries made and carried

through by persons thereunto appointed by the Governor', and that served to validate Mackay and Clarke's proceedings in Tauranga up to that time. But the Act did not rest there. Section 2 also extended validation to future 'grants awards contracts' or agreements 'hereafter to be made or entered into by the Governor or by any person or persons authorised by the Governor'. It was this authority that allowed the Government to continue to defy the requirements of the New Zealand Settlements Act by not allowing the Compensation Court to operate and relying instead on the commissioners of Tauranga lands, as they were by then called. However, the Act did not prescribe how the commissioners were to go about their tasks.

Several other Acts also provided for the awarding of confiscated land in Tauranga. The Confiscated Lands Act 1867 was mainly concerned with arrangements for confiscated land elsewhere, but it had some application in Tauranga. Section 3 allowed the Governor to award confiscated land to deserving persons 'of the Native race' who had acted to preserve the peace and to suppress 'rebellion', a provision that was used to reward some rangatira of Te Arawa and other tribes for assisting the Crown in fighting outside of Tauranga. Section 4 gave the Governor the power to use confiscated land to grant reserves to 'surrendered rebels'. Section 7 allowed the Governor to reserve confiscated land for educational endowments, though those endowments did not have to be for the benefit of Maori, and this provision was applied to a limited extent in Tauranga. According to Stokes, several special powers and contracts Acts, such as those of 1879 and 1883, also provided for the issuing of Crown grants in order to fulfil contracts to certain Tauranga Maori.[2]

10.2.2 The operations of the commissioners

In May 1868, following the enactment of the Tauranga District Lands Act, civil commissioner Clarke was given the additional position of commissioner of Tauranga lands. Apart from a year between January 1870 and 1871, when he was replaced in the latter job by William Mair, Clarke retained both offices until 1876. He also served in Wellington from 1873 to 1879 as the under-secretary of the Native Department. Clarke was not replaced as commissioner of Tauranga lands until 1876, when Herbert Brabant, the resident magistrate at Tauranga, assumed the position. Brabant relinquished the latter post to Clarke for three months from February 1878 and then resumed it briefly until John Wilson was appointed in July 1878. Finally, in January 1881, Brabant was reappointed commissioner of Tauranga lands, a post he held until he had completed the return of lands in 1886.

The intermittent appointments of the commissioners, accompanied as they were by the failure to keep records, did not help in the efficient administration of the awards or the return of lands, the issuing of titles, and the enforcing of such restrictions against alienation as

2. Document A57, p 99

existed. Moreover, the Executive and judicial functions were blurred, since the commissioners were usually resident magistrates and sometimes also judges in the Native Land Court. In dealing with the reserves or the return of lands, they acted in a judicial manner, sometimes even calling their operations a 'Commissioner's Court', but they also had administrative functions relating to the allocation or alienation of land. On occasions, they also acted as Crown purchase agents. Brabant, for instance, was simultaneously the resident magistrate, the commissioner of Tauranga lands, and a Crown land purchase agent. Tauranga Maori who met him in each and every one of those capacities must have been confused as to his intentions and at a disadvantage in dealing with him over their land.[3]

10.2.3 The situation in Tauranga

The processes that we examine in this chapter were complicated by the fluid situation on the ground in Tauranga. Some Maori, including most of Pirirakau, remained 'unsurrendered' despite the submission of 'Ngaiterangi'. The military settlement of the confiscated land and the arrangement of reserves were interrupted by the bush campaign, which we discussed in chapter 9. But, after 1867, the process of European settlement resumed. In the long term, few military settlers remained on the land allocated to them in the confiscated and Te Puna–Katikati blocks, but surplus Crown land in these blocks was opened up to general settlement in 1867. However, as we noted in chapter 9, European settlement of the Tauranga lands developed relatively slowly at first. In 1870, only 257 Europeans were recorded as living in the Tauranga district, and 246 of them were military settlers or their families.[4] But in the early 1870s, once a permanent peace had been established in the region, the numbers began to increase rapidly, and by the early 1880s Pakeha far outnumbered Maori.[5] This growing European population increasingly demanded land. The ongoing process of settlement provides an important and necessary context for our examination of the operations of the commissioners of Tauranga lands.

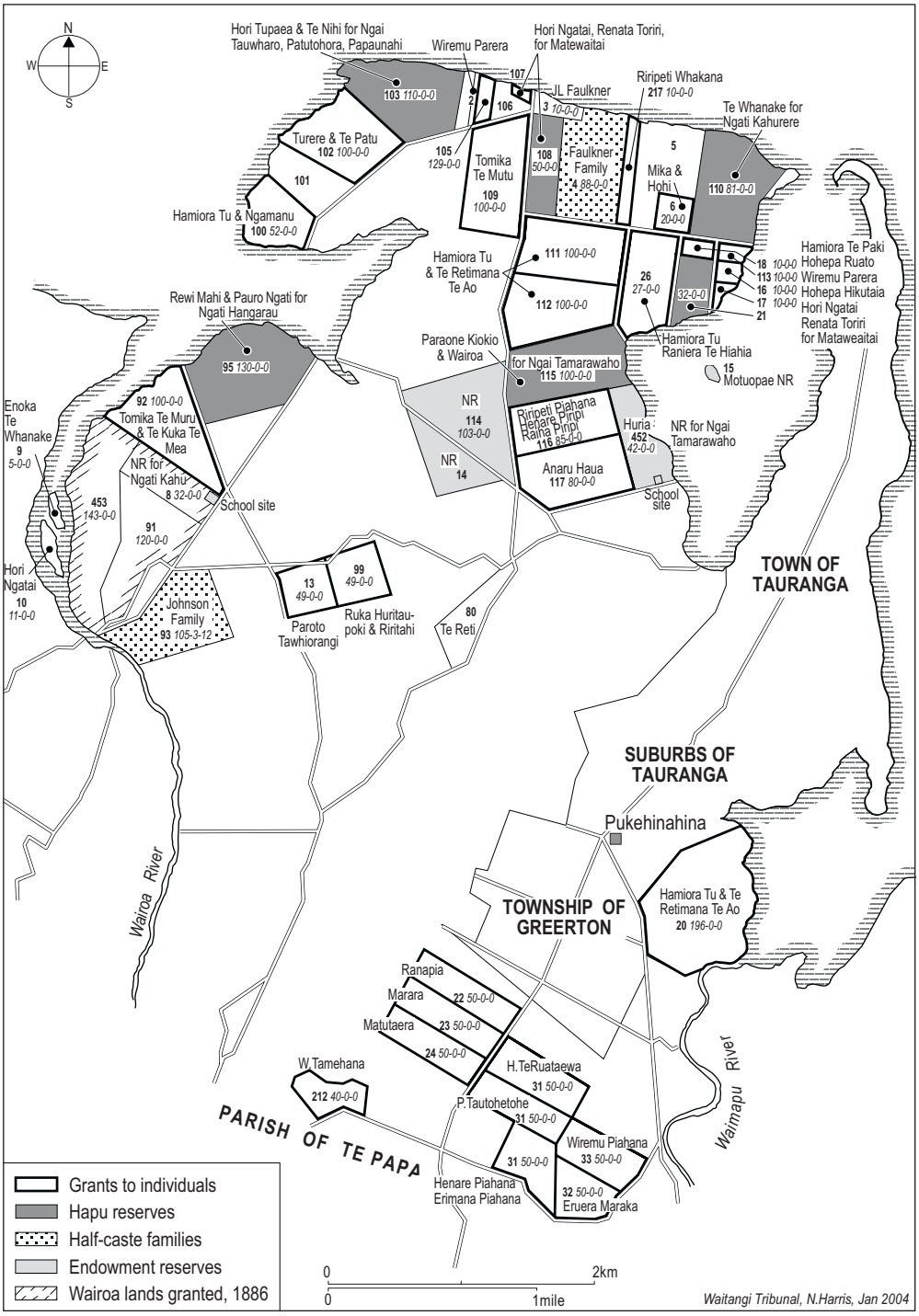
10.3 Reserves Allocated in the Confiscated and Te Puna–Katikati Blocks

10.3.1 Confiscated block reserves

Some 8700 acres of the confiscated block were reserved for or awarded to Maori in fulfilment of various obligations and promises. Originally, Grey had intended to keep the whole of the 50,000 acres as confiscated land, but at hui in June and November 1866 it was agreed that some 6000 acres would be returned, mostly to meet claims from loyal and surrendered Ngai

3. Document A40, pp 15–18; doc A57, pp 85–98
4. Document A22, p 46
5. Ibid, pp 47–48

10.3.1



Map 18: Parish of Te Papa reserves

Te Rangi. Subsequently, Clarke, Mackay, and Brabant arranged for the reserved area to be extended in response to further claims. Full details of the reserve allocations are provided in Stokes' report. We summarise them here according to survey district, before discussing them in relation to particular hapu.

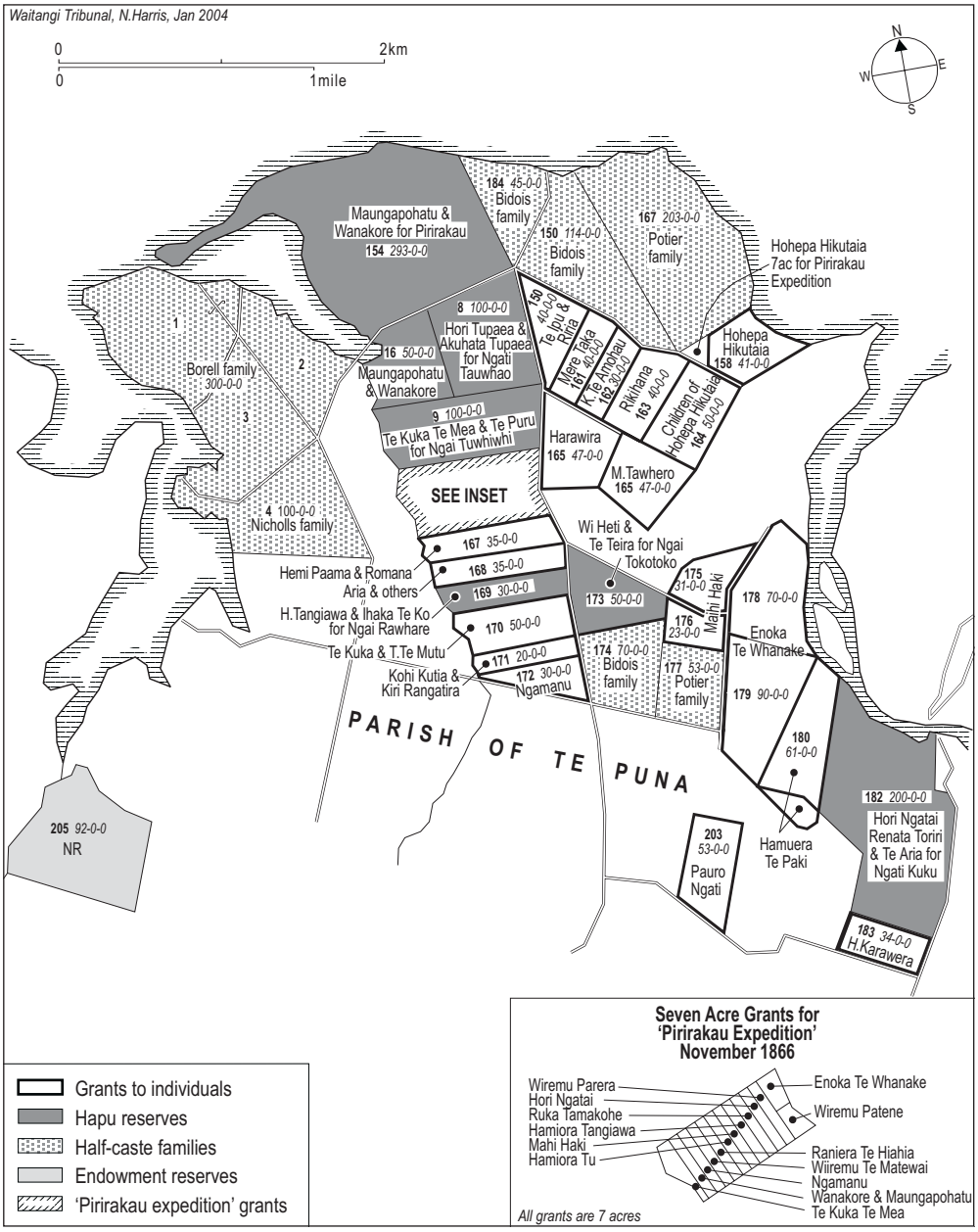
(1) Reserves in the town and suburbs of Tauranga and the township of Greerton

The town and suburbs of Tauranga were laid out on the Te Papa Peninsula in 1866. The perimeter boundaries differed only slightly from those of the two CMS blocks.[6] The township of Greerton was located south of the Pukehinahina battle site. As we explained in chapter 8, the CMS gifted four-fifths of its Te Papa land to the Crown in 1867, retaining the remaining fifth. The society kept its mission house site and selected the remainder of its sections in the town and suburbs of Tauranga. Many were in what was to become the central business district of the town,[7] and most of this land was soon sold. The four-fifths of the Te Papa land gifted to the Crown was variously set aside for Tauranga borough endowments and public reserves, for native reserves, for individual Maori, and for general sale. We confine our discussion here to those lands set aside for Maori.

We begin with the native reserves, sometimes described as endowment reserves. These remained Crown land and were usually administered, under the Native Reserves Act 1856 and amendments, for some specific purpose, such as for a school or hostelry. As we noted above, section 7 of the Confiscated Lands Act 1867 provided for the setting apart of reserves for such purposes. In the town of Tauranga, two areas of land were indeed set aside for a native school and a native hostelry. Although a native school functioned briefly on the reserved site, it was abandoned, and the land appears eventually to have been handed over to the Lands Department. A hostel was then built on that land, and part of the site on the Strand has been retained. It now houses the Tauranga Moana Centre and the office of the Tauranga Moana Maori Trust Board. Several other reserves, amounting to some 15 acres, were established for 'general native purposes' in the town and suburbs of Tauranga and the township of Greerton. In 1872, these were gazetted under the Confiscated Lands Act 1867 as endowment reserves for educational purposes. These were administered in turn by the Reserves Commissioner, the Public Trustee, the Native Trustee, and the Maori Trustee. All these reserves appear to have been leased or sold to third parties, including a 10-acre reserve at Hillsdene that is now the playing fields for Tauranga College, a State secondary school. In 1871, Reserves Commissioner Charles Heaphy listed another 16 acres 3 roods 16 perches of lands in Tauranga and Greerton that could be proclaimed as endowments for the 'support of Natives in Lunatic Asylums, Hospitals and other Charitable Institutions'. According to Stokes, there is no evidence that any of this land was ever gazetted as a native reserve.[8]

6. Document A57, p 156
7. Ibid, pp 160–161
8. Ibid, pp 168–181

10.3.1(1)



Map 19: Te Puna reserves

The second category of land set aside for Maori in Tauranga and Greerton consisted of individual awards. These lots varied in size from two acres down to 12 perches. Altogether, 66 lots were awarded: 57 in the town of Tauranga and nine in the township of Greerton. Though most of the lots were awarded to single named individuals, 15 were awarded to two persons or to one person and an indeterminate number of 'others'. The awards were not confined to Tauranga Maori. One list printed by Stokes has the letters 'A' (for Te Arawa) against 18 of the grants and 'H' (for Hauraki) against four others. Another lot was awarded to two Ngati

Manawa chiefs of Matata. According to Stokes, besides those designated A or H, several other lots were awarded to Te Arawa and Hauraki Maori. The awards to Te Arawa and Ngati Manawa were made as a consequence of Grey's March 1865 promise to them that they would be rewarded for their assistance during the war.[9] We have seen no explanation for the Hauraki awards. Two lots were awarded to the Ngati Pukenga chiefs Paroto Tawhiorangi and Ruka Huritaupoki, as had been promised in the deed of sale for their interests in the Te Puna–Katikati blocks and other parts of the confiscation district.[10] But, despite these numerous exceptions, approximately half the lots were awarded to individuals of Ngai Te Rangi. Some went to well-known 'loyalist' rangatira, such as Hamiora Tu and Raniera Te Hiahia, while others went to neutral or surrendered leaders, such as Hori Ngatai, Hori Tupaea, and Enoka Te Whanake. Clarke and Mackay appear to have made their allocations in a rather ad hoc fashion, and additional lots were awarded to various supplicants. For instance, in March 1868 Mackay arranged for Irene Kawakawa (wife of Louis Dihars) to be given five lots in acknowledgement of some claims that she had made (the nature of which we are unaware).

(2) Reserves in the parishes of Te Papa and Te Puna

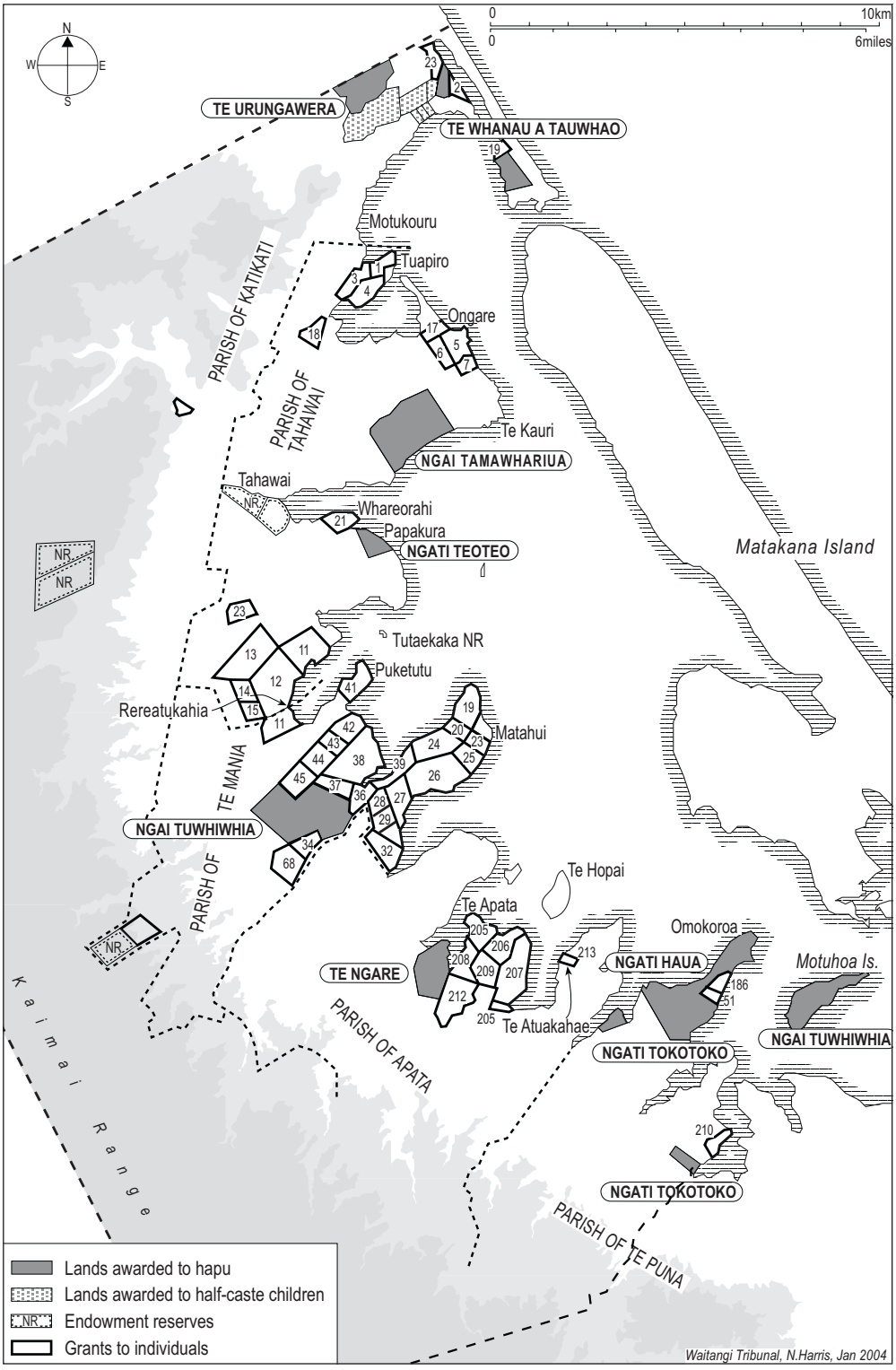
Confiscated land outside the town and suburbs of Tauranga and the township of Greerton was designated as the parishes of Te Papa and Te Puna. The former included land east and south of Greerton, land between the Waimapu and Wairoa Rivers, and coastal land between the Kopurererua Stream and the Wairoa River, which took in the kainga at Judea, Bethlehem, and Otumoetai. Te Puna parish included the land across the Wairoa River as far as the Te Puna Stream (the eastern boundary of the Te Puna–Katikati blocks). Once again, awards and reserves made in these parishes were of various kinds. They included native reserves, lands awarded to hapu 'in trust', grants to individuals, and 'half-caste' awards. We discuss these in turn. The lot numbers of most of the reserves, their acerages, and the awardees are listed in maps 17 and 18.

Native reserves in the parish of Te Papa included some that were made for a specified purpose, such as a reserve of two acres six roods at Bethlehem and a 16-perch reserve at Judea, which were both intended for native schools. Other reserves set aside 'for benefit of natives generally' were also later used for specific purposes. These included an island in the Waikareao Estuary that was reserved as a burial ground, and the large (159 acres 2 roods) Brookfields reserve at Otumoetai, which was set apart in 1872 as an endowment for educational institutions.

Although awards to individuals were usually made to one person, they sometimes went to two or three. Although it might have been assumed at the time that these awards would be held in trust by individual rangatira for their whanau or hapu, no such trust was written into most of the grants. The majority were granted in fee simple to the named individuals and in

9. Document A57, pp 159–164
10. Ibid, p 244

10.3.1(2)



Map 20: Te Puna–Katikati reserves

multiple ownership where there was more than one awardee. Stokes listed grants to individuals in the parish of Te Papa at Otumoetai, Bethlehem, and Greerton which varied in size from five to 200 acres, although most were around 50 acres. At Otumoetai, 14 lots amounting to 783 acres were awarded to 18 different persons, all from Ngai Te Rangi hapu. The list of awardees contains the familiar names of Hamiora Tu, listed in three awards, Raniera Te Hiahia, and Tomika Te Mutu. Only three individual awards were made at Bethlehem – one each to Enoka Te Whanake and Hori Ngatai, and one to Tomika Te Mutu and Te Kuka Te Mea together. These men were Ngai Te Rangi, although Bethlehem was Ngati Ranginui territory. Lastly, in Te Papa parish there were 10 awards, varying in size from 40 to 196 acres, on the outskirts of the Greerton township. Most of these went to Ngai Te Rangi rangatira such as Hamiora Tu, but a few appear to have been made to individual Ngati Ranginui.[11] To sum up, most of the individual rural awards went to 'loyalist' or surrendered Ngai Te Rangi, as with the town lots.

In the parish of Te Puna, 20 lots amounting to 816 acres were awarded to 25 individuals (plus Hikutaia's children). The grants varied in size from 20 to 161 acres. Though Te Puna parish was mainly Ngati Ranginui and particularly Pirirakau territory, the names of Ngai Te Rangi chiefs such as Te Kuka Te Mea, Tomika Te Mutu, and Enoka Te Whanake once again figured prominently in the lists of awardees. Some of these men also figured in what were called the 'Pirirakau expedition' grants, which consisted of 14 grants each of seven acres. Thus, 'loyalist' Ngai Te Rangi chiefs were doubly rewarded: first, for their support of the Crown in the battles at Pukehinahina and Te Ranga and in the peace negotiations; and, secondly, for their support during the bush campaign, though the grants came largely at the expense of Ngati Ranginui hapu.

Lastly, of the individual awards, there were the 'half-caste' awards. These were made to children of Maori mothers and Pakeha fathers (such as Fairfax Johnson, John Faulkner, William Nicholls, and three French traders at Te Puna – Charles Potier, Louis Bidois, and Emil Borell). Most of the awards were located at Te Puna and Otumoetai, and some of the land still remains in the ownership of descendants of these families today.

In addition to the individual awards, a number of awards were made to hapu, mainly of Ngai Te Rangi. However, there were some exceptions, including awards to two Ngati Ranginui hapu, Ngai Tamarawaho and Ngati Hangarau. We list below, on the basis of Stokes' report, the known hapu reserves. As Stokes reminded us, this task was complicated by the fact that many hapu names are no longer in use or have changed over time.[12] Several of the hapu listed no longer appear to exist as independent hapu. Stokes listed seven hapu reserves awarded in Te Papa which together amounted to 559 acres.[13] These were awarded to individuals 'in trust' for the following Ngai Te Rangi hapu: Te Whanau a Tauwhao, Patutohora, Papaunahi, Matewaitai (Ngati Kuku), and Ngati Kahurere. In addition, Ngati Hangarau and Ngai Tamarawaho of

11. Document G1, p 45
12. Document A57, p 231
13. Ibid, p 190; doc F3, p 92

Ngati Ranginui were awarded a reserve each. Although the names Patutohora, Papaunahi, and Matewaitai do not appear to be currently used, Te Whanau a Tauwhao is, and the representatives of that hapu appeared before us. Ngai Tamarawaho and Ngati Hangarau are also active Ngati Ranginui hapu – we held hearings on their marae, which remain on remnants of the reserves granted them. Unlike some of the hapu reserves in Te Puna parish, those at Otumoetai, Bethlehem, and Greerton appear to have been on land traditionally owned by the recipients. Two other reserves were awarded to Ngati Pukenga; these were in the parish of Te Papa near Bethlehem and had been promised in the deed of sale signed by Ngati Pukenga for the Te Puna–Katikati blocks. The reserves were both of 49 acres and were granted to Paroto Tawhiorangi and to Ruka Huritaupokoi and Riritahi together. However, they were in an area which the tribe did not customarily occupy.

Stokes listed another seven reserves (totalling 1067 acres) that were awarded 'in trust' for hapu in Te Puna parish. These were awarded to Ngai Tuwhiwhia, Ngati Kuku, Ngati Rawhare, Ngati Tokotoko, Pirirakau, and Te Whanau a Tauwhao. All of these hapu, except Pirirakau and Ngati Tokotoko, who identify themselves as Ngati Ranginui, were Ngai Te Rangi. And all except Ngati Tokotoko and Ngati Rawhare appeared in our inquiry.[14]

Several additional awards of land in multiple ownership were granted in the mid-1880s to members of the Wairoa hapu under the Volunteers and Other Lands Act 1877.[15] These awards, which included three granted in 1886 (amounting to 315 acres), were near Bethlehem, in both parishes, and Brabant allocated them while he was returning land in the remainder of the confiscation district. Brabant also allocated a number of inland reserves in the parish of Te Papa, mainly in multiple ownership. In only two of these awards were hapu mentioned: 650 acres were granted to 111 members of Ngai Tamarawaho and 318 acres were granted to 52 members of Ngati Hangarau. These were rugged, bush-clad blocks of land just inside the confiscated block's boundaries. Stokes listed six other blocks inside the confiscated block that were allocated to groups of owners varying in number from one to 89, although the hapu affiliations of the owners were not specified.[16] A similar award of 42 acres in multiple ownership was made to 112 members of Ngai Tamarawaho in 1884 at Judea.

Because many of the awards did not specify which hapu the recipients belonged to, we cannot say exactly how much land each hapu was awarded. For their part, Clarke and Mackay kept few notes of their proceedings, so we cannot be sure of the basis for their decisions; indeed, Stokes wrote that some of them appeared to have been 'arbitrary'.[17] In the absence of instructions on how to proceed, the commissioners seem to have behaved like Native Land Court judges and, when expedient, they apparently determined interests in the confiscated block according to customary rights. Thus, members of the various hapu of Ngai Te Rangi

14. Document A57, pp 185, 188
15. Ibid, p 190
16. Document G1, pp 45–47
17. Document A57, p 231

were awarded returned land at Otumoetai; Ngai Tamarawaho individuals were awarded land at Judea; and Ngati Hangarau individuals received land at Bethlehem. On the other hand, some blocks of land were awarded to members of Ngai Te Rangi, usually in the form of individual grants, within areas where Ngati Ranginui maintained kainga and had strong customary interests.

10.3.2 Te Puna–Katikati reserves

We now discuss land reserved for Tauranga Maori in the Te Puna–Katikati blocks. Most of these reserves were set apart according to the various purchase deeds that had been agreed to at a July 1866 hui at which the main terms for the purchase and establishment of reserves were decided (see sec 7.5).[18] Additional awards were made, for a variety of purposes, both before and after the deeds were signed. The apparently generous awards that the Crown granted Ngai Te Rangi in their deed of sale for Te Puna–Katikati were said by Mackay to be compensation for land that they lost in the confiscated block. The location and lot numbers of the Te Puna–Katikati reserves are detailed in map 19, while the names of those awarded the reserves are listed in appendix III.

We note from Stokes that, although several schedules of allocated reserves have been preserved, giving reasonably complete details of the location and extent of the awards and the principal recipients, little information has survived on the process of allocation. The actual awarding of the land was carried out mainly in 1866 under the direction of James Mackay, the civil commissioner for Hauraki, whose district included the Te Puna–Katikati blocks. Henry Clarke, the civil commissioner for Tauranga, also had some involvement, particularly in relation to later additions to the reserves. Neither Mackay nor Clarke kept detailed records of his proceedings, and there is no formal record of how their schedules of reserves were compiled. However, a few letters from Tauranga Maori applying for land have been preserved.[19] Together with some notes by Mackay, quoted by Stokes, these indicate that many of the awards were made in response to individual applications.[20] In a report to the Native Department dated 31 July 1867, Mackay described how the reserves were allocated. In his version of events, he and Clarke had endeavoured to :

> adjust any outstanding claims by making reserves for some of the loyal persons who had received but little before on account of their lands being within the Military Settlement Block of 50,000 acres, although they had but very small right to the land otherwise within the Katikati and [Te] Puna blocks.[21]

18. Document A2, pp 103–106
19. Document A57, p 101
20. Ibid, p 104
21. Ibid, p 106

10.3.2

The Te Puna–Katikati deeds have been discussed in detail in chapter 7. As we noted there (sec 7.5.2), five deeds were signed: one with Ngati Paoa in August 1866; one with Ngati Pukenga, also in August 1866; one with Ngati Maru and Ngati Tamatera in September 1866; one with Ngai Te Rangi in November 1866; and one with Pirirakau, Ngati Hinerangi, and Ngati Tokotoko in May 1871. The first and last of these deeds made no provision for reserves. The other three made provision for land to be 'reconveyed' or 'returned' as follows:

- The Ngati Pukenga deed of 14 August 1866 provided for two 50-acre blocks and two town lots to be reconveyed to the tribe. As we noted above, the 50-acre blocks (actually 49 acres) were awarded in the parish of Te Papa, while the town lots were in the town of Tauranga. The land was awarded to named individuals, not as reserves held in trust for the tribe, and no restrictions on alienation were placed on it.[22]
- The Ngati Maru and Ngati Tamatera deed of 3 September 1866 provided for the following land to be reconveyed: a 50-acre block described as a burial place at Pukewhakataratara; five-acre burial grounds at Tiroa and Te Paewai; and three five-acre blocks at Takaihuehue, Ngatukituki, and Tangitu. The recipients of the reserves were not named. According to Stokes, the 50-acre Pukewhakataratara burial ground and the five-acre Ngatukituki urupa are wahi tapu on the summit of the Kaimai Range south of Mount Te Aroha. However, she was not able to locate the other places or find any record that the reserves promised in the deed were either surveyed or granted to Hauraki Maori.[23]
- The Ngai Te Rangi deed of 3 November 1866 had three supplementary lists of signatures, which pertained to additional payments of 10 December 1866, 24 June 1867, and 23 January 1868, and an undated schedule designated as a 'List of Lands Returned to Natives'. The schedule has been reproduced in full, with corrections, in Stokes' report, so here we merely note its salient characteristics. It records three kinds of information: the locality, the recipients, and the area of each award. Most of the reserved land was on or near the coast of the inner harbour from Te Puna to Katikati and was land to which Ngai Te Rangi had strong, if not necessarily exclusive, customary claims. Three blocks were described as 'bush land'. The reserves varied in size from 20 to 500 acres, although most were around 100 acres, and the total area listed in the deed was 6054 acres. The blocks were awarded to one or two individuals, and sometimes to 'others' as well. In one instance, a hapu, Ngati Tokotoko, was named as the recipient of a 400-acre block at Omokoroa.

When the reserves recorded in these deeds were awarded, a few of them were designated for the use of named hapu, including Ngai Tamawhariua, Ngai Tuwhiwhia, and Te Ngare. However, unlike the Ngati Tokotoko award, they were not recorded as being 'reconveyed' for the use of the hapu in the Ngai Te Rangi deed.

22. Document N21, p 13
23. Document A57, p 47

A list of reserves allocated in the Te Puna–Katikati blocks was compiled by Clarke in 1871. This list of 'Lands Awarded to Natives' included the reserves recorded in the deeds noted above, as well as an additional 900 acres of reserves added in the interim. In the same year, Charles Heaphy, the commissioner of native reserves, produced a schedule of reserves for Auckland province.[24] This list included a number of reserves at Tauranga, several of which were in the Te Puna–Katikati blocks. These reserves, including 240 acres at Omokoroa, granted to Raihi, Hakairiwhi, 'and tribe', were allocations made subsequent to those listed in the deeds. The Omokoroa reserves were granted for the use of Ngati Haua and, according to Heaphy, were to be inalienable.[25] Several other hapu and endowment reserves appear to have been added between 1871 and 1886, among them a 162-acre reserve at Katikati for the use of Te Urungawera, which was vested in 59 owners in 1884.[26] Clarke's schedule of 29 June 1871 listed reserves and awards totalling 6909 acres. This list divided the 'reserves' into two main categories: hapu reserves and individual grants. Hapu reserves covered 2451 acres and varied in size from 32 to 500 acres. Of this total, 589 acres were granted 'in trust' for hapu, and the rest were, most often, granted in multiple ownership.

Most of the rest of the reserves in the Te Puna–Katikati blocks were individual grants, varying in size from 20 to 200 acres and totaling 4747 acres. Various Ngai Te Rangi rangatira who figured prominently in the awards in the confiscated block also received significant awards in Te Puna–Katikati. Raniera Te Hiahia received 200 acres, Hamiora Tu 150 acres, Hori Tupaea 209 acres (plus a half share of another 50 acres), Enoka Te Whanake 244 acres, and Hohepa Hikutaia 300 acres (plus a half share of another 100 acres).[27] Even though all these rangatira had customary interests in the land, they did not have a sole right of ownership. However, the land was granted in individual shares, with no obligation on the grantees to hold it in trust and no restriction on alienation. Other than hapu and individual awards, two half-caste families were awarded land at Katikati, and five lots in Te Puna–Katikati were designated 'native reserves'. Of these, two were classified as 'timber reserves', one as a 'general wood reserve' (these three were located in the Kaimai Range).

Altogether, by Stokes' estimation, 8378 acres of reserves were awarded in Te Puna–Katikati. Although we acknowledge that several other totals have been produced by counsel or claimant researchers, they all fall within the general vicinity of this estimate.

24. 'Report from the Commissioner of Native Reserves', AJHR, 1871, F-4, pp 15–16
25. Ibid, p 16
26. Document A57, p 194
27. Ibid, pp 196–197

10.4 Claimant and Crown Submissions on the Allocation of Reserves

10.4.1 Claimant submissions

Before making findings of fact on the allocation of reserves within the Te Puna–Katikati blocks and the confiscated block, we outline claimant and Crown submissions on the issue. The claimants' allegations of Treaty breach concerning the allocation of reserves traverse the same issues as the allegations arising from the 'return' of land in the remainder of the confiscation district. We therefore make Treaty findings at the end of the chapter that cover all alleged Treaty breaches concerning reserves within the confiscated and Te Puna–Katikati blocks, and the 'return' of land elsewhere in the district.

The joint submission made on behalf of a number of hapu claimants alleged four breaches of Treaty principle in relation to the allocation of reserves and the return of land at Tauranga. Specifically, these were: the Crown's refusal to convene the Compensation Court; its destruction of customary tenure; the methods it used to allocate land; and its failure to provide a sufficient endowment of land for the future needs of Tauranga hapu. We have already made a finding on the first of these allegations in chapter 6. Findings on the general questions of tenure reform and the process for returning land are made at the end of this chapter. We leave our finding on the issue of the sufficiency of the endowment until the end of chapter 11, in order to allow us to examine the matter in light of the alienation of land, as well as the allocation of reserves. Several other counsel representing various Ngati Ranginui hapu and counsel for Ngai Tauwhao ki Otawhiwhi also alleged that the Crown failed to provide sufficient land for the future needs of the specific hapu they represented. A finding on these allegations is also left for chapter 11.

In the joint submission, counsel noted that, while it was not known how the allocation of the reserves was decided, the actual granting of the reserves was often arranged by Whitaker, with Clarke and Mackay finalising the allocations on the ground.[28] According to counsel, the Crown was not concerned with setting aside sufficient lands for hapu in the Te Puna–Katikati blocks; rather, the 'bulk' of the allocations were made to compensate for losses in the confiscated block.[29] Counsel submitted that Ngati Ranginui hapu, especially Ngati Hangarau, the Wairoa hapu, and Ngai Tamarawaho, were significantly disadvantaged by the allocation of reserves in the confiscated block, and that the customary land of some hapu was awarded to individuals with no customary rights to it. Such awards included those made to Te Arawa chiefs as payment for loyalty and services.[30]

Counsel for Pirirakau estimated that some 10,000 acres of their land was confiscated between the Wairoa and Te Puna Rivers and that only 836 acres were returned to them.[31] The returned land was in two categories: lots 16 and 154 at Te Puna, totalling 50 acres, were

28. Document N11, pp 169–173
29. Ibid, p 173
30. Ibid, p 174
31. Document N9, p 31

awarded to Maungapohatu and his son, Te Wanakore, who had remained neutral during the Tauranga wars; and various lots amounting to 786 acres were awarded to the half-caste descendants of three French settlers whose wives were Pirirakau.[32] No restrictions as to alienation were placed on this land, though lots 16 and 154 were designated hapu reserves. According to counsel, no reserves were set aside for the majority of Pirirakau, who had not surrendered. The reserves granted to Maungapohatu and Te Wanakore were described by counsel as 'a paltry allocation to a hapu who at 25 September 1866 numbered 87 men, women and children'.[33] Counsel added that no reserves were set aside for Pirirakau in the Te Puna–Katikati blocks, despite much of that land being in the customary rohe of the hapu.[34]

Counsel for Ngai Tamarawaho claimed that her clients' customary rohe ran in a narrow strip from Te Papa Peninsula and Huria back to Taumata in the Kaimai Range, but that only a small portion of this was returned to them. Most of what was returned was comprised of 'rugged terrain, poorer soils, [and] dense bush' and was subject to 'cold winters', as compared with the fertile soil and frost-free climate of the coastal lands they lost.[35] Counsel characterised the Crown's treatment of the hapu as comprising three failures: failure to apply principles of customary tenure by converting land into individualised titles, 'thus expediting the loss of land'; failure to expeditiously return lands as reserves for the subsistence needs of the hapu; and failure to award the hapu sufficent reserves of suitable quality 'to support themselves adequately, let alone to prosper'.[36]

Counsel for Ngati Hangarau noted that his clients received only three lots in the confiscated block: one at Bethlehem and the other two in the Kaimai Range. According to counsel, only the 130 acres awarded at Bethlehem was coastal land; the rest in the Kaimai Range was 'of a poor quality and unsuitable for the subsistence needs of Ngati Hangarau'.[37] Counsel argued that 'the Crown breached its Treaty obligations by failing to ensure that Ngati Hangarau were left with sufficient land for their present and future needs'. The Crown had also 'consistently refused and/or failed to provide Ngati Hangarau with any further land', despite numerous petitions and representations being made to it on the matter.[38]

Counsel for the Wairoa hapu said that, in 1886, Ngati Kahu and Ngati Rangi were granted three lots of 315 acres inside the confiscated block, while Ngati Pango were said to have been given interests in a Te Puna lot of 200 acres, along with Ngati Kuku. The delay in allocating Wairoa hapu their reserves was attributed to Clarke's bias against them, which supposedly arose from the events of the bush campaign. Counsel identified several issues in relation to the allocation of reserves that allegedly negatively impacted on the Wairoa hapu. These

32. Ibid, pp 32–34
33. Ibid, p 33
34. Ibid, pp 34–35
35. Document N23, p 39
36. Ibid, pp 36–40
37. Document N15, p 14
38. Ibid, pp 15–16

included the loss of kainga, mahinga kai, and wahi tapu; the allocation of reserves to non-customary owners; the delay in granting reserves; and the conditional nature of the allocation to Ngati Kahu, which depended on their continuing 'good behaviour'.[39]

Counsel for Ngai Tauwhao ki Otawhiwhi submitted that the hapu were granted three reserves in the parish of Katikati; two of them (of 68 and 32 acres) were granted to Te Ninihi, Turere, and Te Patu 'in trust', and one (of 162 acres) was granted to 59 owners. Because of these 'meagre' reserves, Ngai Tauwhao ki Otawhiwhi had struggled to maintain their hapu and had been unable to ensure an economic return from the land as a result of absenteeism and fragmentation of title. The Crown had thus breached its obligations under the Treaty to ensure that Ngai Tauwhao ki Otawhiwhi retained sufficient lands for their present and future needs, and the hapu had been left in a 'desolate and impoverished state'.[40] Counsel for Ngai Tukairangi submitted that only 9 per cent of the Te Puna–Katikati land was set aside as reserves and this meant that the Crown was 'hardly liberal' in its allocation of land.[41]

Finally, we note the submission of counsel for the Hauraki and Marutuahu claimants. While acknowledging that a total of £2160 was received for his clients' interests in the Te Puna–Katikati blocks, in addition to 'several town sections' and one urupa, counsel pointed out that the promise of 75 acres of wahi tapu and other reserves did not appear to have been fulfilled.[42] He further noted that claimant researcher Tony Walzl had been unable to find any documentary record of the grant of the wahi tapu. Then, in submissions in reply to the Crown, counsel took the Crown to task for its argument that the Tribunal could not make a finding on the wahi tapu reserves promised in the Hauraki deed because of a lack of evidence on their fate. He submitted that, because the reserves were wahi tapu, no definition of their boundaries could be given, and that it was 'trite for the Crown to say, as it does, that in the absence of evidence of conveyance, it cannot be presumed that it did not occur'.[43]

10.4.2 Crown submissions

In its closing submissions, the Crown referred to what it saw as a considerable body of evidence in claiming that no breach of contract had taken place in the allocation of reserves in the confiscated and Te Puna–Katikati blocks. With a few minor exceptions, all the reserves promised at the June and July 1866 hui, and recorded in the Te Puna–Katikati deeds, had been allocated by the Government as agreed. Furthermore, in addition to those recorded in the deeds, other reserves in the confiscated and Te Puna–Katikati blocks were set aside between 1865 and 1867. In Crown counsel's opinion, these were most likely reserved to compensate

39. Document N14, pp 19–20
40. Document N18, pp 19–21
41. Document N10, p 25
42. Document N16, p 43
43. Document P11, p 5

those who had lost land in the confiscated block. Counsel submitted that by 1873 the Government had issued grants for the majority of the reserves, and they further submitted that, because no evidence existed that the 75 acres of wahi tapu reserves promised to Hauraki iwi were not set aside, the Tribunal could not come to any conclusion regarding Crown wrongdoing in the matter. Counsel also denied that Tauranga Maori were at a disadvantage because of Whitaker's dual role as a 'purchaser and allocator of reserves'. In the Crown's view, Whitaker did little more than pass Maori requests for reserves on to Mackay and Clarke.[44]

10.5 Findings of Fact on the Allocation of Reserves

10.5.1 Process of allocating reserves

As we noted above, the Crown's closing submissions in relation to the allocation of reserves in the confiscated and Te Puna–Katikati blocks were largely confined to the question of whether the Government fulfilled its obligations, as recorded in the various deeds, to set aside reserves within the two areas. We agree with the Crown that it did, with the exception of the Hauraki wahi tapu reserves, which we discuss at section 10.8.

We disagree with the Crown's assertion that Whitaker's involvement in the allocation of reserves was limited to merely passing on requests to Mackay and Clarke – it is clear that he was involved in the actual allocation of land as well as the passing on of correspondence to the civil commissioners. According to Mackay, Whitaker arranged several allocations to enable Tauranga Maori to 'fulfil engagements entered into with Europeans for the sale of some land'.[45] Whitaker was involved not only in the allocation of the reserves as a Government official but also in their subsequent conveyancing as a private lawyer. We return to this issue in chapter 11.

As far as Mackay and Clarke's procedures are concerned, it is clear that they made allocations as they saw fit. Their awards were made either as part of the agreements for the Crown purchase of the Te Puna–Katikati blocks or in response to written or verbal claims from individuals. Mackay and Clarke never planned the reservation of a set amount of land for the use of Tauranga and Hauraki hapu. However, they did demonstrate considerable knowledge of the tribal landscape, both in Te Puna–Katikati and in the confiscated block.[46] We now move on to examine to what degree this knowledge was taken into account in their allocation of the reserves.

44. Document 02, pp 58–65
45. Mackay, 'Meeting in June 1867', Le 1/1867/114, ArchNZ (doc A57, p 40)
46. See Mackay's 'Rough Sketch Plan of Tauranga District', 4 May 1867 (doc A57, p 44)

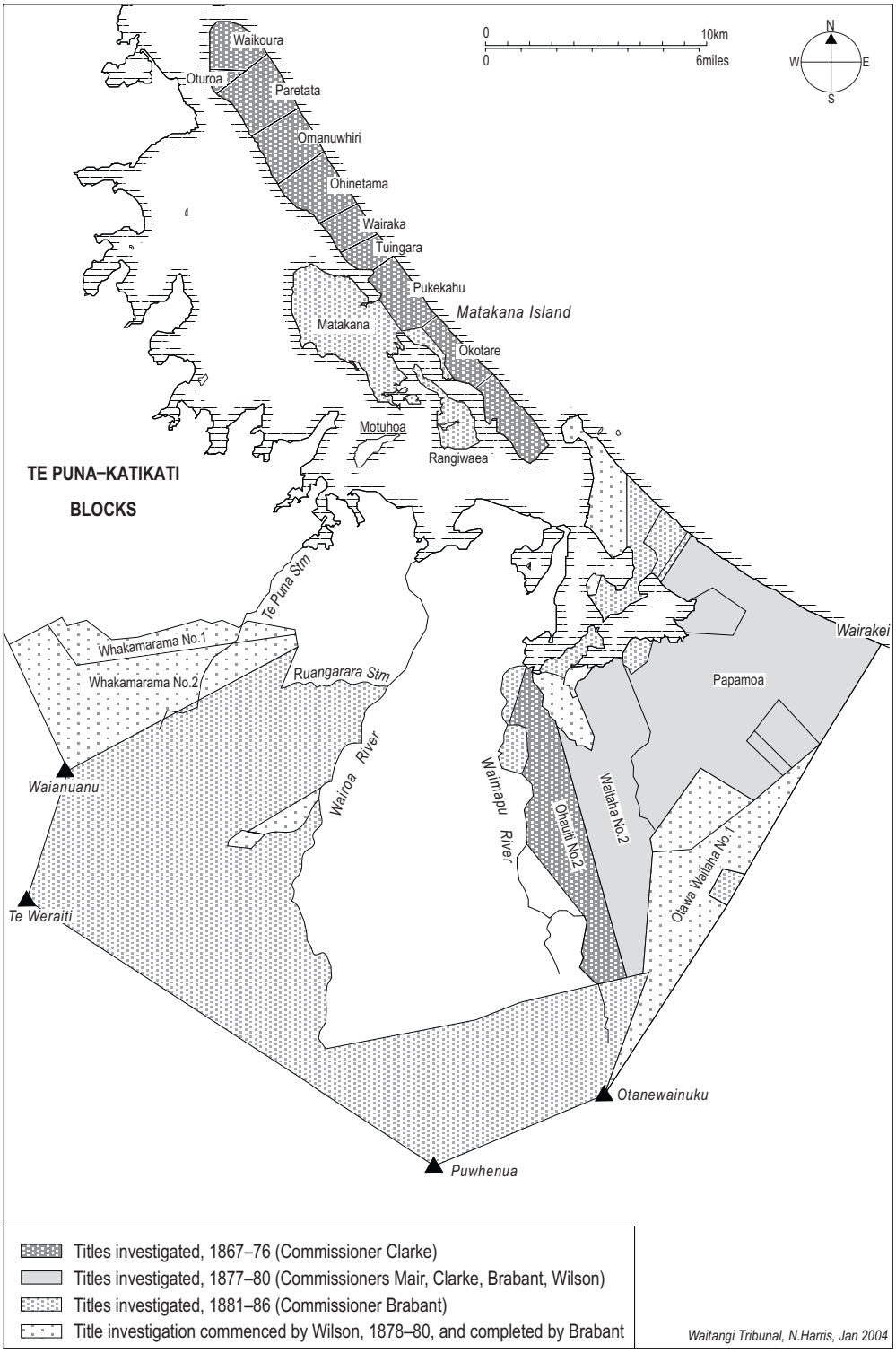
10.5.2 Distribution of reserves amongst hapu

The Crown awarded an estimated 16,602 acres as reserves or grants to Tauranga Maori in the Te Puna–Katikati blocks and the 50,000-acre confiscated block. In the latter, the reserves were largely allocated to Ngai Te Rangi individuals, despite the fact that, in customary terms, Ngati Ranginui had rights to the greater part of the block. In Te Puna–Katikati, virtually no awards were made for the use of Ngati Ranginui hapu or, as far as we can ascertain, to individual Ngati Ranginui. This despite the fact that some Ngati Ranginui hapu, such as Ngati Pango and Pirirakau, had extensive interests in the Te Puna portion of the purchase and that Mackay and Clarke were aware of those interests. During the bush campaign, it was obviously difficult for Mackay and Clarke to deal with these hapu, but after the fighting ended and peace was restored, the Government still refused to allocate reserves to hapu considered to be 'unsurrendered rebels'.

In our view, Ngai Te Rangi individuals who had partial interests in the confiscated block – persons such as Hori Ngatai, Te Kuka Te Mea, Tomika Te Mutu, Enoka Te Whanake, Hamiora Tu, and Hori Tupaea – were adequately compensated for their losses by the award of reserves within the confiscated block. In addition, their hapu, such as Ngai Tuwhiwhia, Ngati Kuku, Ngati Kahurere, and Te Whanau a Tauwhao, were allocated relatively substantial reserves in the block, regardless of their status as 'loyal' or surrendered 'rebel'. This combined allocation of land to Ngai Te Rangi was relatively generous compared with the small area of reserves awarded to Ngati Ranginui (which were mostly in the form of awards to individuals to be held in trust for hapu).

Crown and claimant counsel agreed that the allocation of reserves in Te Puna–Katikati was connected to a perceived need to compensate 'loyalists' for land confiscated and retained within the 50,000-acre block. Indeed, Clarke and Mackay claimed that this was a factor in their decisions. But if it was a factor, it was a relatively minor one. The majority of reserves awarded in Te Puna–Katikati were negotiated as part of the Crown's deal to purchase the blocks. They were 'reconveyed' to Ngai Te Rangi individuals, largely those who had customary interests in the west of Te Puna–Katikati, such as Te Moananui Maraki, Hohepa Hikutaia, Enoka, Te Kuku, and Tupaea. Reserves were awarded to 'loyalist' and 'surrendered rebel' alike, with no reference made to losses in the confiscated block. These reserves were clearly allocated in order to gain the chiefs' assent to the Te Puna–Katikati sale, as we noted in chapter 7, while those awarded after the ones recorded in the Te Puna–Katikati deeds were largely for the use of hapu or 'half-caste' families with well-established customary interests in the land they were awarded. Therefore, losses in the confiscated block were being compensated for only by awards of land in the block itself, rather than by awards in Te Puna–Katikati or elsewhere in the confiscation district.

Several claimant counsel alleged that in the allocation of some reserves, the customary interests of the former owners were not acknowledged. This was clearly the case to some



Map 21: Progress of title investigation

extent, especially in the confiscated block. Most obviously, town lots were awarded to Te Arawa individuals as a reward for services rendered, and those who assisted in the bush campaign were awarded land in the parish of Te Puna where their rights were not established. Other examples include the allocation of 500 acres of land near Pukehinahina and between Otumoetai and Huria to Hamiora Tu and Te Retimana Te Ao. This was land to which Ngai Tamarawaho had strong customary claims. Similarly, awards at Bethlehem to Enoka, Te Kuka, Tomika, Hori Ngatai, and rangatira of Ngati Pukenga appear to have been largely in the traditional rohe of Ngati Hangarau or one of the Wairoa hapu. The Crown argued that awarding land to which recipients may have had no traditional right had been necessary so that the burden arising from the confiscation could be distributed evenly amongst Tauranga Maori. However, in practice, the burden was not evenly shared. Some land that Ngati Ranginui hapu had stronger claim to under custom was awarded to individuals of Ngai Te Rangi or other iwi. This was done either as a reward for services rendered to the Crown or to enable previous agreements to sell land to be finalised. In the case of the land awarded to Ngai Te Rangi individuals, the awards were made without regard to the part those individuals played in the Tauranga or Waikato fighting.

10.6 The Return of Land in the Remainder of the Confiscation District

10.6.1 Introduction

When we discuss what was called the 'return' of land in the remainder of the confiscation district, we need to be aware that the land was not returned under customary tenure.[47] Land was awarded to individuals listed by the commissioners of Tauranga lands after an inquiry in what was sometimes called the 'Commissioner's Court'. Then, once the block had been externally surveyed, Crown grants were issued to those individuals in undivided shares. This was frequently a prelude to the alienation of the land to the Crown or private purchasers. In the remainder of the confiscation district, title was not determined in the way that it was when reserves were allocated in the confiscated and Te Puna–Katikati blocks. With the exception of the Matakana blocks, nearly all the remainder land was awarded to lists of owners, called 'certificates', which resembled the memorials of ownership issued by the Native Land Court after 1873. When Mackay and Clarke awarded reserves in the confiscated and Te Puna–Katikati blocks, they were normally awarded to one, two, or (at the most) three named individuals. By contrast, when the commissioners of Tauranga lands returned blocks in the remainder of the district, much larger lists of owners were usually drawn up. These lists sometimes contained more than 100 names.

47. Document J1, pp 64–65

10.6.2 Sources

We are limited in our discussion of the return of land by a lack of sources. The lists of Tauranga Maori who had land 'returned' to them were recorded by the commissioners and were available to us in our inquiry. However, there is only a small amount of documentary information available on the procedures used to draw up these lists. This dearth of material is largely due to the commissioners' failure to keep detailed records, which they were not required to do either by statute or by direction from the Native Department. Clarke, the first commissioner involved in the return of land discussed in this section, does not appear to have left any record of his proceedings. Wilson kept some notes, but he refused to hand them over to his successor, and researchers have been unable to locate them. Brabant, who completed the return of land, did keep some records, although not all of these have survived or been located. In her report on the allocation of reserves, Stokes reproduced Brabant's first minute book, which was compiled by his clerks and was essentially a record of proceedings. However, she was unable to locate a second minute book that was occasionally referred to. Stokes also reproduced the notes that Brabant made during his hearings, which, although they record some of the evidence presented and some of his decisions, give little indication of his reasons for those decisions.

10.6.3 The procedures of the commissioners of Tauranga lands

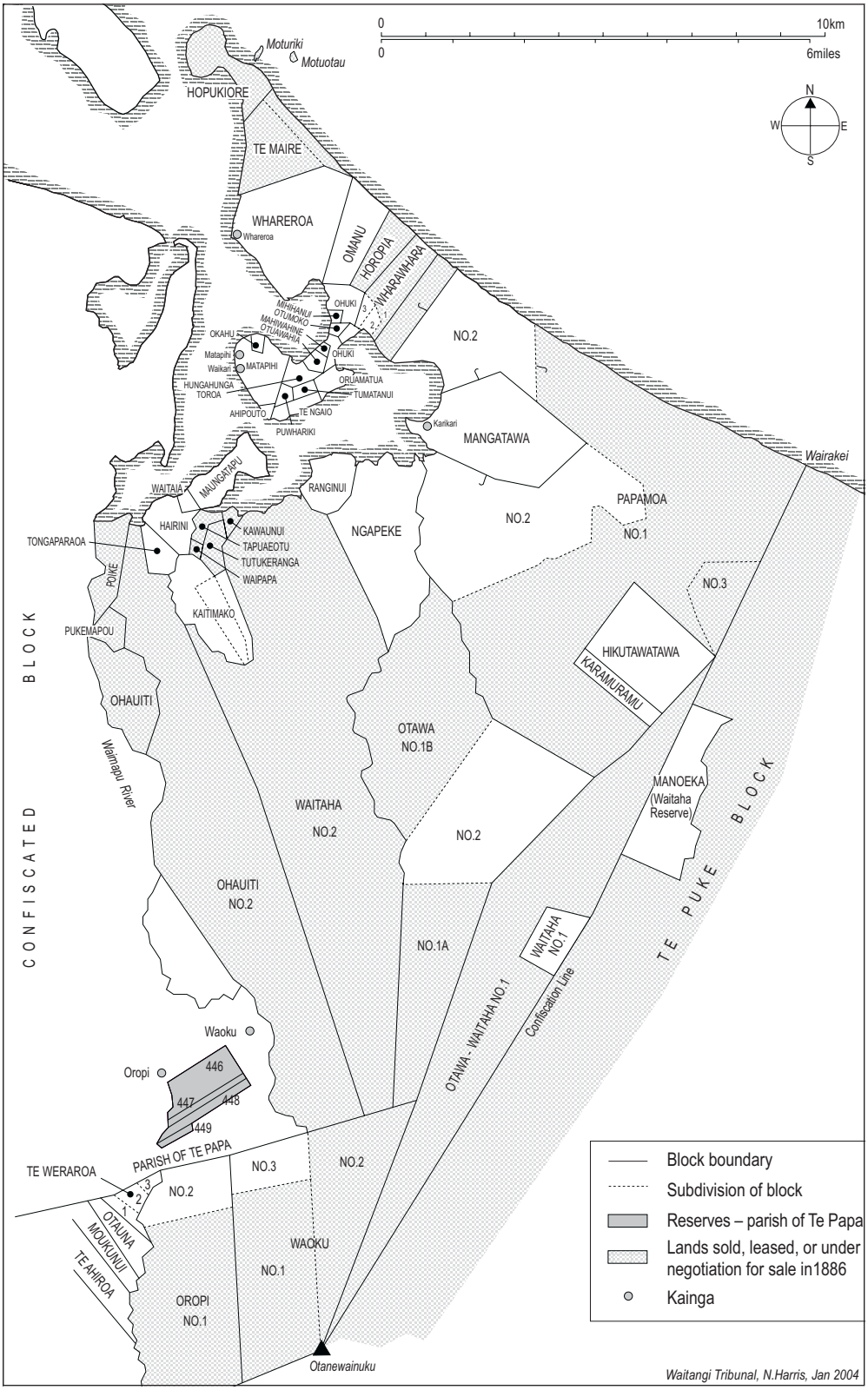
In July 1868, Henry Clarke was appointed a commissioner to determine 'what persons of the tribe Ngaiterangi' were to receive 'the three-fourths in quantity' of the land described in the schedule to the May 1865 Order in Council. Before his appointment was notified, Clarke had already received some guidance from the Native Minister. He was told that, in dealing with land outside the confiscated and Te Puna–Katikati blocks, he was to divide it:

> as nearly as may be equitably among the Ngaiterangi, having regard to the shares which the several hapu of that tribe have already received of the purchase money of Katikati [Te] Puna, and of the Reserves in the District generally. In doing this you should if practicable obtain the general assent of the tribe to the proposed arrangements, and in order to afford no excuse to the Natives for future complaint, it would be desirable to suspend your final award for a period sufficiently long to enable you to report your proposals, and allow the dissentients, if any, to forward their objections for the consideration of the Government.[48]

This instruction and the terms of Clarke's appointment reflect the language of the May 1865 order. Despite that order promising to return three-quarters of the district to 'Ngaiterangi', the land was generally returned to customary owners, even where those owners were from iwi other than Ngai Te Rangi. The exception to this was land belonging to Waitaha and

48. Halse to Clarke, 29 June 1868, MA4/63, ArchNZ (doc A22, p 27)

10.6.3



Map 22: East harbour blocks

Pirirakau, which the commissioners were reluctant to return to the 'unsurrendered' portions of those tribes.[49]

Clarke did not start hearing claims until 1873, and he made little effort to finalise them before handing the job over to Brabant in 1876. As late as May 1881, Brabant was complaining that there was 'no direction in the [Tauranga District Lands] Acts as to how the enquiry should be made'. He added that, so far as he knew, the commissioners had conducted their inquiries 'in an open court' and had 'more or less assimilated their practice to that of the Judges of the Native Lands Court'. Nevertheless, he thought that the commissioner's procedures ought to be fixed by legislation or by regulation, partly in recognition of the fact that his decisions determined the ownership of large tracts of land, and partly to 'shut out future claimants'. Another problem, Brabant admitted, was 'the practice of the different commissioners not having been in all respects similar nor in any case authorised by law'.[50] But the Native Minister considered it 'undesirable to introduce fresh legislation', and Brabant was left to proceed as he thought best.[51] Even his request for a native assessor, as per Native Land Court practice, was refused, although he was authorised to use one informally and did so on some occasions.[52]

While the commissioners did usually follow Native Land Court procedures and made awards that were based on customary rights, the comparison with the land court needs to be considerably qualified. Most importantly, the Native Land Court's procedures were prescribed by legislation, such as the Native Lands Act 1865. There was no such statutory definition for the commissioners' proceedings, other than the all-embracing validation in the Tauranga District Lands Act 1867 and the limited provisions of the Commissioners Powers Act 1867. The commissioners' behaviour could be arbitrary and ad hoc. They were free to conduct inquiries if, when, where, and how they chose. As Clarke admitted to the Native Affairs Committee in 1878, sittings of the commissioner's 'court' were not publicly advertised and no formal record of its proceedings were kept. Clarke also told the committee that the commissioner's decision was 'absolute almost' and no appeal could be made against his decision except by request to the Government. If any appeal was made, Brabant was later told by the Native Department, the Minister was likely to take the advice of the commissioner who had made the original decision.[53] In contrast, the Native Land Court followed a formal procedure that required the court to consider all appeals against its decisions. Before 1880, appeals were made to the Governor in Council, who consulted with the chief judge of the Native Land Court before deciding whether to rehear the case. After 1880, the chief judge was given sole power to grant a rehearing. For Tauranga Maori, the only hope of redress was by informal appeal to the commissioners themselves or to other Government officials, or by petitioning

49. Document A22, p 28
50. Brabant to Lewis, 16 May 1881, 4/26, Tauranga confiscation file, DOSLI, Hamilton (doc A22, p 32)
51. Lewis to Brabant, 7 June 1881, 4/26, Tauranga confiscation file, DOSLI, Hamilton (doc A22, p 32)
52. Document A22, p 33; doc J1, p 44
53. Minutes of evidence, Native Affairs Committee, 20 September 1878, AJHR, 1879, I-4, pp 3–4 (doc A22, p 33)

Parliament. By 1886, at least 39 petitions had been presented to Parliament by Tauranga Maori, most of them protesting the allocation of returned land.[54]

10.6.4 Progress of the inquiries

Here, we summarise the progress of the commissioners' inquiries and awards, based on their periodic official reports. In August 1869, Clarke wrote that the settlement of various claims was proceeding 'satisfactorily', if a little slowly.[55] It is unclear what claims Clarke was referring to, although he had recently dealt with some claims to Matakana Island, where Europeans were negotiating to buy land. Yet, in 1871, a spokesman for those Pakeha, Thomas Gillies, complained that the Government had still not fulfilled its promise of 1864 'with respect to giving back to the Natives a portion of the confiscated land'.[56] Clarke did not begin actual hearings until 1873. In his report for 1879, Wilson stated that 'administration' had been completed for 19,734 acres and was still incomplete for 38,951 acres, and that 77,636 acres had yet to be investigated.[57]

We presume that by 'administration' Wilson meant that claims to the land had been considered, or were being considered, by the commissioners. Since writing his report, Wilson had considered *de novo* seven blocks of land containing 13,221 acres. But he admitted that much of the land so 'administered' had not yet been surveyed, let alone awarded as a Crown grant. In any case, as we noted above, many of Wilson's investigations had to be repeated, since he refused to hand over the record of his proceedings to Brabant.

Brabant finally completed the task in May 1886. He reported that he and his predecessors had dealt with 210 blocks, covering a total area of 136,191 acres (exclusive of the confiscated and Te Puna–Katikati blocks).[58] Surveys had been completed for all of the blocks, 'certificates of investigation of title' had been sent to the Native Department (with the exception of three that were still being prepared), and the Crown Lands Department was issuing Crown grants to those named in the certificates. Now that Brabant's task was complete, any future proceedings relating to the land, such as subdivisions and successions, would be dealt with by the Native Land Court (in fact, the court had already assumed this role). In his report, Brabant included a detailed return of the lands that had been dealt with. This included the name and area of each block, the name of the commissioner who had conducted the investigation, and the numbers and dates of the certificates of title. We do not reproduce these lists here, but we do note that nearly all of the blocks were dealt with by Brabant, either alone or in combination with one or both of the other commissioners. In most of these latter instances, Brabant

54. Document A22, pp 204–213
55. Clarke to 'my dear Doctor' (Pollen), 9 August 1869, McLean papers, MS-micro-0535045, ATL (doc A22, p 30)
56. NZPD, 21 September 1871
57. 'Report from Wilson to Native Minister – Tauranga District Lands Act', 8 July 1879, AJHR, 1879, G-8, p 1
58. Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Lands Act', 4 May 1886, AJHR, 1886, G-10, pp 1–5

was clearly the commissioner who concluded the adjudication started by Clarke, Wilson, or Mair. The only exceptions relate to a group of blocks on Matakana Island and a few blocks on the mainland, which were dealt with by Clarke on his own. Brabant's report states that the certificates for those blocks were 'Not dated'. We discuss these blocks in more detail in section 10.6.5(1).

10.6.5 The awards

In this section, we discuss the return of land on an iwi and hapu basis. However, at the outset it is important to reiterate that the land was returned not to hapu as corporate bodies but to individual hapu members as undivided shares. As we have noted above, some reserves were awarded to individuals in trust for hapu in the confiscated block and Te Puna–Katikati. This did not happen in the remainder of the district, as far as we are aware, except possibly on Motiti. We do not provide a block-by-block description of the return of land, since that was done in Brabant's 1886 report, and more recently in greater detail in Stokes' report on the allocation of reserves. We follow Stokes in our general description of the land returned to members of various iwi and hapu, but make occasional reference to claimant research reports. We also note Stokes' caution that it is 'not possible to establish in numerical terms just how many acres were allocated to each hapu'.[59] This was partly because hapu were relatively mobile geographically and in terms of who they were affiliated to at the time, and partly because the Crown, when returning land, was intent on individualising the tenure. Like Stokes, we concentrate on those hapu that are recognised today, have functioning marae, and have submitted claims to us. We also note Stokes' point that the Crown acquisition of the confiscated and Te Puna–Katikati blocks, and the way in which land was awarded in those areas, caused considerable relocation of hapu to the land returned in the remainder of the confiscation district. We outline some examples below.

(1) Ngai Te Rangi hapu

In view of their pre-war occupation of much of the coast of the Tauranga district, it is not surprising that members of Ngai Te Rangi hapu gained most of the returned land along the coast. East of the confiscated block, they were awarded the coastal land from Mauao (Mount Maunganui) to the edge of the confiscated district at Wairakei, and most of the land around the eastern harbour from Whareroa through Matapihi to Maungatawa and Maungatapu, and from there back to the hills towards the southern boundary of the confiscation district. The principal resident hapu that received land were Ngai Tukairangi and Ngati Kuku at Mauao and Whareroa, Ngati Tapu at Matapihi, Nga Potiki around Maungatawa, and Ngati He at Maungatapu. According to Stokes, Whareroa was not permanently occupied until the

59. Document A57, p 283

mid-1860s, probably because the sandy soil was not suitable for cultivation, although it was a valuable base for collecting shellfish. After the confiscation, some of the hapu that had been living at Otumoetai, including Ngai Tukairangi, Ngati Kuku, Matewaitai, and Ngati Kahurere, shifted to Whareroa under the leadership of Hori Ngatai.[60] They gradually merged and are today known as Ngai Tukairangi, although some continue to regard themselves as Ngati Kuku. Besides Ngai Tukairangi, members of several other hapu, such as Ngai Tamawhariua and Ngai Tuwhiwhia, were listed in the awards for Mauao and some of the blocks at its base. Though several hapu shared Matapihi and had kainga there, it is Ngati Tapu who are dominant today. With Ngai Tukairangi, they had formerly occupied Otamataha on the Te Papa Peninsula, but after the Hauraki attack in 1828 they evacuated that site and established a new kainga at Matapihi. Nga Potiki also had interests at Matapihi, although their main interests were further east, where they were awarded the adjoining Maungatawa and Papamoa blocks.[61]

Apart from Ngati Pukenga (discussed below), members of Ngai Te Rangi hapu, particularly Ngati He, had land returned to them from around the southern margin of the harbour as far west as the Waimapu Valley and the boundary of the confiscated block. There, their interests overlapped with those of several Ngati Ranginui hapu (this is discussed below). There had been considerable mixing of hapu interests bordering the Waimapu Valley, and the hapu did not fall neatly into a Ngai Te Rangi–Ngati Ranginui division. To some extent, Brabant recognised this; his lists for the Oropi blocks, for example, included both Ngati He and the Ngati Ranginui hapu Ngai Te Ahi. Further inland, there were additional complications, with some blocks being awarded to individuals from hapu with Te Arawa affiliations. We note these below.[62]

Lastly, we note the return of land to individuals of the various hapu of Ngai Te Rangi on islands in the western branch of the harbour and offshore. The return of Matakana Island was hastened by attempts by leading Aucklanders, including Whitaker, his partner Thomas Russell, and William Daldy, to purchase the land. These efforts began as early as 1866, when Whitaker was engaged with Mackay and Clarke in arranging the allocation of reserves in the confiscated block. We discuss the negotiations to buy Matakana Island in chapter 11, but note here that in October 1876, Clarke sent the Native Minister, Donald McLean, a list of the blocks in the part of the island that he had investigated. He asked McLean to issue titles for these blocks, which stretched the length of Matakana's sandy seaward side. However, the titles were never issued to Ngai Te Rangi hapu; since the land had already been sold to various Aucklanders, it was they who received them.[63] The inland-facing hump of Matakana, which has fertile volcanic soil, was eventually returned, and settlement was concentrated around the Ngai Tuwhiwhia kainga at Opureora.

60. Document A57, pp 234–238
61. Ibid, p 241
62. See also doc J2, pp 101–117
63. Document A8, pp 6–10

As for the other awards, members of Ngai Tuwhiwhia were awarded all of Motuhoa Island;[64] Te Whanau a Tauwhao and Ngai Tuwhiwhia (who had been living on land that was confiscated at Otumoetai) were consolidated on Rangiwaea Island; and Te Whanau a Tauwhao were also awarded Tuhua (Mayor Island) and most of Motiti.[65] The latter award was made by the Native Land Court and was the only part of the confiscation district where title was awarded by the court rather than by one of the commissioners of Tauranga lands. The remainder of Motiti went to the Patuwai hapu of Ngati Awa.

(2) Ngati Ranginui hapu

As noted in chapter 2, despite the arrival of Ngai Te Rangi at Tauranga, Ngati Ranginui hapu had retained kainga around the harbour and along the river valleys from Waimapu, Waikareao, and Wairoa around to Te Puna, and from each of these valleys their rights had reached into the bush-clad Kaimai Range. As we stated above, Ngati Ranginui hapu lost much of this land through the Crown's retention of the confiscated block. Moreover, most of the reserves awarded in that block and the Te Puna–Katikati blocks went not to them but to Ngai Te Rangi. However, when the lands south of the confiscated block were returned, individuals from the various Ngati Ranginui hapu were allocated the majority of the interests.

In Brabant and Clarke's allocation of returned land, Ngai Te Ahi received land in the Waimapu Valley and shared Oropi with the Ngai Te Rangi hapu Ngati He (as noted above).[66] Ngai Te Ahi also shared another Waimapu block with Nga Ruahine. Further west, inland of the confiscated block, members of Ngai Tamarawaho received the Taumata block, while Ngati Hangarau were awarded the Paengaroa 2 and Tauwharawhara blocks. These heavily forested blocks were separated by the Omanawa River. In terms of acreage, they probably exceeded the amount lost by these hapu in the confiscated block, but the land was not of comparable agricultural quality, and it was, in any case, already within the traditional rohe of the two hapu.[67]

On the west bank of the Wairoa River, the land running to the southern boundary of the confiscation district was returned to other Ngati Ranginui hapu and, sometimes, to a combination of Ngati Ranginui hapu and hapu affiliated to Tainui. Stokes described the ancestral rights in this area as 'complex' and noted that Brabant had recorded the presence of numerous hapu in the region, including some of Ngati Ranginui descent, two of Ngai Te Rangi (Ngai Tuwhiwhia and Ngai Tamawhariua), and others who were of Tainui descent. She concluded that Brabant must have taken into account 'the complex overlapping and interlocking ancestral rights of many hapu who used this area of bush and the Wairoa River system as a mahinga kai and principal corridor between the coastal and inland people'. In our

64. Document A57, p 237
65. Ibid
66. See also doc G1, pp 49–58
67. Document A57, pp 246–253

next chapter, however, we note that Brabant awarded titles to small groups of owners, meaning the blocks in this area could easily be sold to Europeans.[68] Most of the land to the west of the upper Wairoa River went to members of three hapu that appeared before us (Ngati Rangi, Ngati Pango, and Ngati Kahu). Once again, the blocks were usually shared by members of two or more hapu. Further west, as Stokes put it, 'there was no question about the status of Pirirakau as owners, whether "Hauhau" and unsurrendered rebels or not, when the Whakamarama block was awarded to them'.[69] However, over 7000 acres of Whakamarama were awarded to a small 'loyalist' section of Pirirakau. The majority of the 'unsurrendered' hapu members were awarded only approximately 3300 acres.[70] These awards were shared with non-Pirirakau, including Ngati Hinerangi and Ngati Tokotoko.[71]

(3) Ngati Pukenga

As we noted above, Ngati Pukenga were reserved two town sections and two other 50-acre blocks by their Te Puna–Katikati deed. The Ngati Pukenga involved in the transaction were at that time living at Manaia on the Coromandel Peninsula. But there was one Ngati Pukenga settlement in the Tauranga district; it was at Ngapeke on the south-eastern corner of Tauranga Harbour. Though Ngati Pukenga had previously been driven from the district by Ngai Te Rangi, in 1857 they were gifted land at Ngapeke by Ngati He in return for support in a dispute with other Ngai Te Rangi over an 'eel pa'. This arrangement was recognised by Brabant, and he awarded the 1496-acre Ngapeke block to Ngati Pukenga, which left them sandwiched between Ngati He at Maungatapu and Nga Potiki at Maungatawa.

(4) Waitaha

Waitaha's interests traditionally straddled the area around the eastern boundary of the confiscation district from Otanewainuku to Wairakei. We are concerned in this report with their rights on the Tauranga side of that boundary to what were called the Otawa–Waitaha blocks. They received only a small portion of these blocks, having to share the titles with members of several other hapu. Then, soon after the awards were made, the Crown began to purchase the blocks.[72]

Waitaha claimant researcher Mary Gillingham examined Brabant's hearing of claims to the various blocks to the east of Tauranga Harbour.[73] She noted that Brabant had divided the land into five blocks. Of these, Mangatawa and Otawa 2 were awarded to Nga Potiki, Otawa 3 was awarded to Ngati He and Ngati Whainoa, and Ngapeke was awarded to Ngati Pukenga. As for

68. Document A57, p 256
69. Ibid, p 265
70. Document A57(a), pp 91–93
71. Document A57, pp 254, 266
72. Ibid, p 242
73. Document K25, pp 191–198

the fifth block, Otawa 1, Brabant postponed awarding it. As Gillingham explained, Brabant's decisions were very unpopular, and three of the four major claimants lodged complaints about them. It appears that Waitaha had not known of the hearing and had not been present. Together with Ngati He, Ngati Whainoa, Ngati Pukenga, and some other Te Arawa hapu, they protested, complaining about Brabant's procedure and his disregard of customary occupation rights in making his awards. Clarke was appointed to rehear the matter. He decided that ancestral claims alone were insufficient and that the loyalty of various sections of Waitaha to the Crown needed to be taken into account when considering how much land should be returned to them. Clarke accepted that, based on custom and occupation, Waitaha had sound claims to the inland, if not the coastal, portion of Otawa. However, owing to Hakaraia's involvement in the bush campaign (see ch 9), Clarke decreased the amount of the inland portion of the block that would have been Waitaha's by customary right. The award to Waitaha was described as Otawa–Waitaha 1 and was granted jointly to the descendants of Te Iwikoroke, as distinct from the descendants of Hakaraia. It amounted to 4947 acres, about a fifth of the area inside the confiscation boundary claimed by Waitaha. The rest of the land was awarded to members of Nga Potiki and Ngati He. Subsequently, Wilson prepared a list of 78 individual owners of Otawa–Waitaha 1. According to Gillingham, the names of some of the 'rebel' faction were infiltrated into this list.[74] Nevertheless, Wilson did not complete the work of issuing title to the block and, as noted above, refused to hand over his records. Brabant had to rehear the claim and prepare a new title list. He completed this in 1883, with only one change of name. Title was issued at the urging of the Native Land Purchase Department, which wanted to acquire the block for the Crown.

(5) Other Te Arawa hapu

In addition to Waitaha, members of Ngati Rangiwewehi and other closely related Te Arawa hapu were awarded land in the Waoku blocks in the south-eastern corner of the confiscation district.[75] This was a token recognition of Te Arawa's rights in the area covered by the extension to the confiscation district in the schedule to the Tauranga District Lands Act 1868 (see ch 6).

(6) Tainui hapu

Several Tainui groups claimed rights extending over the Kaimai Range into the southern portion of the Tauranga confiscation district. As noted above, one of these, Ngati Haua, was awarded reserves at Omokoroa in the Te Puna block. The only other Tainui awards were in the Ongaonga and Kaimai blocks, where interests were granted to members of Ngati Raukawa, and in the Whakamarama and Mangatotara blocks, on the southern boundary of

74. Ibid, p 199–201
75. Document A57, p 242

the confiscation district, where land was granted to members of the Tainui-affiliated Ngati Hinerangi and Ngati Tokotoko.[76]

10.7 Claimant and Crown Submissions on the Return of Land

10.7.1 Claimant submissions

Turning to the submissions on the return of land, we begin with the joint submission lodged on behalf of various Ngai Te Rangi and Ngati Ranginui claimants.[77] This linked the return of lands in the remainder of the confiscation district to the 'indiscriminate' effect of the confiscation. Quoting researcher Tony Nightingale, counsel spoke of an 'equalisation of punishment' to correct the earlier injustices arising from the confiscation of the 50,000-acre block and the Te Puna–Katikati purchase. By this, counsel meant that the process of returning land was used by the Government to compensate various groups for the land they lost in the confiscated block and that therefore land was not always returned to hapu in areas where they had traditional rights. The submission also noted that, from the appointment of the first commissioner in 1868 to Brabant's completion of the task in 1886, it took 18 years to return the land. Counsel also complained that the commissioners appointed by the Government were military men who had been involved in the then-recent war against Maori and who lacked legal training.

Claimant counsel's chief complaint, however, related to the lack of proper process: the Government provided insufficient guidance to the commissioners on how they were to proceed, and the commissioners themselves failed to keep proper records of their proceedings, correctly identify customary owners, and allow appeals against their determinations. Of the latter alleged failure, counsel submitted that 'Maori were denied this right even though as British subjects they could have expected to have some recourse to appeal any decision'. They were entitled to 'due process pursuant to Article Three of the Treaty. This was denied to them.'[78] Counsel also disputed the Crown's assertion that the Tauranga confiscation was 'fundamentally not a confiscation under the New Zealand Settlements Act 1863' and that it was therefore acceptable that the Compensation Court was not used for the return of land. Counsel argued that the taking of land at Tauranga was 'in fact and in law' a confiscation under the 1863 Act, as defined by the Order in Council of 18 May 1865, and a judicial process to return the land should have been used.

The overall result, according to the joint submission, was that neither those hapu that lost land in the confiscated block, and were partially compensated with land in the remainder of the confiscation district, nor those hapu that had customary rights to the district ended up

76. Document A57, pp 254–258
77. Document N11, pp 173–185
78. Ibid, pp 183–184; see also doc P8, pp 43–44

with a sufficient endowment of land. As examples, counsel pointed to Ngati Hangarau and the Wairoa hapu, which they said were allocated meagre reserves in the confiscated block. Although they did also receive some land in the Kaimai Range, it was rugged, covered in bush, and unsuitable for cultivation. The joint submission admitted that some hapu did have 'a substantial portion of their rohe' returned to them, but it argued that they, too, suffered prejudice as a result of the 'fragmentation and partition of interests' and rapid and large-scale alienations. The individualisation of title to returned land meant that Tauranga Maori 'were now exposed to alienations and the avarice of settlers and Government officials'.

The joint submission also argued that the imposition of individual tenure was in breach of the right of Maori to 'own, manage and utilise their lands in accordance with their customary preferences [as] was guaranteed by the Treaty'. Tauranga Maori, the submission continued, 'did not consent to the imposition of European tenure and individualisation of title'; in truth, they were not even consulted. Counsel asserted that 'the confiscation of the Tauranga lands and their subsequent return in individualised European ownership was a fundamental breach of Article 2 of the Treaty of Waitangi that violated the tradition of customary land tenure, tikanga and taonga tukuiho'. This argument was supported by quotations from the Tribunal's *Taranaki* and *Rekohu* reports.[79] Other counsel made similar allegations of Treaty breach relating to this process.[80] The joint submission in reply disputed all of Crown counsel's main assertions relating to the individualisation of tenure. Counsel claimed that the evidence used by the Crown in its submissions was irrelevant to its argument that, in the circumstances of the time, the unilateral extinguishment of customary title was justifiable. According to counsel, the right to retain land 'undisturbed' was central to, and explicitly stated in, the Treaty of Waitangi, regardless of either the popular or the legal views that prevailed among Europeans at the time.[81]

We note other submissions that raise additional or hapu-specific points. Counsel for Ngai Tamarawaho, who allegedly lost most of their land through the confiscation of the 50,000-acre block, argued that they did not receive any compensation at all, since the blocks they received at Taumata, which amounted to 6400 acres, were their traditional land anyway. Moreover, it was 'difficult country and not comparable in quality to their [confiscated] coastal lands'.[82] Counsel for Ngati Hangarau was also concerned that the allocation of returned land to the hapu (the Tauwharawhara and Paengaroa 2 blocks, of 2268 and 2933 acres respectively) was poor quality hill-country in the Kaimai Range. Moreover, long delays were suffered before title was awarded and, even then, not all members of the hapu were included in these awards.[83]

79. Document N11, p 181–182; see also doc N6, p 20; doc N23, p 40
80. For example, doc N4, pp 21–31; doc N7, pp 28–32; doc N11, p 182
81. Document P8, pp 12–15
82. Document N23, pp 36–37, 39
83. Document N15, pp 14–15

Counsel for the Wairoa hapu noted that his clients were awarded various blocks of land in the Wairoa Valley beyond the boundaries of the confiscated and Te Puna blocks. But the Wairoa hapu were not designated as the sole owners of the returned land and sometimes, as in Poripori, were only a minority of those awarded title. Counsel suggested that this was because the hapu were regarded as 'Hauhau' and their customary interests were consequently disregarded in favour of others. As a result, the upper Wairoa Valley, which, according to counsel, was formerly the exclusive territory of the three Wairoa hapu, had to be shared with others who were being rewarded for their loyalty to the Crown. On top of this, the land granted to the Wairoa hapu was of poor quality and insufficient for their needs.[84]

Counsel for Pirirakau noted that his clients received Whakamarama 1, 2, and 2A, which lay to the south of Te Puna–Katikati. Although these blocks totaled 11,145 acres, the land was 'rough hill country, economically marginal and difficult to cultivate'. To compound the matter, counsel alleged, Pirirakau were not the sole recipients of the Whakamarama blocks, since others with no customary rights were included.[85]

Counsel for Ngati Pukenga made a submission on the award of the 1496-acre Ngapeke block, which he said was allocated partly on ancestral grounds and partly on the basis of a tuku by Ngati He (as we have noted above). However, counsel alleged that the Crown breached the principles of the Treaty by failing to provide sufficient land for Ngati Pukenga and failing to respect their rangatiratanga, and by returning the land in individualised title.[86]

10.7.2 Crown submissions

In its closing submission, the Crown argued that, because of Grey's promise to return three-quarters of the district, 'Tauranga was to be regarded as a special case. It was fundamentally not a confiscation under the New Zealand Settlements Act 1863.' For this reason, the Compensation Court was not the appropriate body to carry out the Governor's promise. Nor was the Native Land Court a suitable alternative: after the proclamation of the Order in Council of 15 May 1865, which confiscated the land, that court had no jurisdiction in the district. In any case, the Native Land Court would have had to determine title according to customary rights, which would have led to 'serious inequity'. This was because of the need to adjust 'the burden [of the confiscation] . . . as fairly between Tauranga Maori as possible'.[87] Instead of using either court, the Crown decided to use commissioners, appointed under the Commissioners Powers Act 1867, a forerunner of the Commissions of Inquiry Act 1908. Such an inquiry did not constitute a court, and it was therefore inappropriate to treat the Tauranga commissioners as being constrained by the normal judicial requirements of a court.

84. Document N14, pp 20–22, 24
85. Document N9, pp 35–38
86. Document N21, pp 14–15
87. Document O2, pp 65- 66

The Crown submission then commented on the work of the commissioners of Tauranga lands, although it admitted that the documentary record of their work was 'scant'. According to Crown counsel, Clarke and Brabant were involved in all but three of the 210 'cases'. Counsel submitted that Clarke could make awards according to customary interests, except where he had to provide for those who had lost land in the confiscated block. Although the Crown accepted that 'the Government gave Clarke no detailed instructions about processes he should follow', it did not accept that his decisions were 'procedurally flawed'.[88] Nor did the Crown accept that there was no provision for rehearings. It took this position for two reasons: first, because Clarke was instructed not to submit his decisions to the Crown Lands Office (which issued Crown grants) before dissenters had had an opportunity to protest and, secondly, because some of the commissioners' investigations were in fact reheard. The Crown did, however, admit that Clarke was hindered in the performance of his duties as commissioner by his other engagements, by his failure both to keep formal records of his proceedings and to publicly notify them, and by his restriction of awards to those people who attended his hearings. In spite of this, the Crown concluded, Clarke generally followed the procedure of the Native Land Court.

Crown counsel next discussed Brabant's performance. More involved than Clarke, Brabant dealt with 175 of the 210 Tauranga 'cases'. Counsel noted that, in May 1881, Brabant wrote to the Native Department asking the Government to regulate the proceedings of the commissioners of Tauranga lands. He was told to 'assimilate' his practice to that of the Native Land Court and that there was no need for any new legislation. Since Brabant, like previous commissioners, was already doing this, no further advice was needed. The Crown submission noted, on the strength of later Native Land Court decisions, that Brabant usually awarded land to those who had customary rights. The exceptions were in cases where it was necessary to admit outsiders in order to ensure that the return of lands was 'equitable as amongst the hapu of Tauranga'.[89]

In reply to claimant submissions that the Crown breached article 2 of the Treaty by individualising title to Maori land, Crown counsel offered four counter-arguments. First, counsel argued that the destruction of tribal tenure was not necessarily in breach of the Treaty because 'the protection to be afforded by the Crown to customary title is limited to times of peace'. This assertion was based on a quoted passage from the 1847 judgment in *R v Symonds*. Secondly, counsel submitted that the prevailing European attitude to Maori land tenure in the nineteenth century needed to be considered when evaluating Crown policy. Counsel stated that bringing land under a British system of tenure was believed to be part of the 'civilisation' of indigenous populations throughout the British Empire. At the time, such an approach was commonly held to be in the best interests of Pakeha and Maori alike. Thirdly, counsel stated that the adoption of a British system of land tenure was necessary for the enfranchisement of

88. Ibid, p 70
89. Ibid, pp 76–78

Maori. Lastly, Crown counsel argued that there 'is certainly evidence to support the view' that Tauranga Maori were aware of the Crown's general plan to individualise Maori land titles in the 1860s. Some Ngai Te Rangi rangatira had attended the Kohimarama conference in 1860, where this issue was discussed. In the Crown's view, the response of Ngai Te Rangi rangatira at that conference showed 'general support for all matters discussed'.[90]

10.8 Treaty Findings

Most of the claimants alleged Treaty breaches relating to the allocation of reserves and the return of land. These alleged breaches can be grouped as follows: first, they relate to the relative distribution of land amongst the hapu of Tauranga; secondly, they relate to the process by which the commissioners allocated reserves and returned land; and thirdly, they relate to the individualisation of title that was entailed in the process of confiscating and returning land. We examine the first allegation in light of the principle of equal treatment: namely, that the Crown was obliged to treat Maori in a manner that did not 'allow one iwi an unfair advantage over another' and that did not exploit or widen tribal divisions.[91] We examine the second and third allegations of Treaty breach in light of the principle of active protection, under which the Crown had an obligation, inherent in article 2 of the Treaty, to protect the land and rangatiratanga of Tauranga hapu. A central component of the principle of active protection is the guarantee of due process to Maori, and the related obligation that the Crown has to act in good faith when dealing with Maori. The claimants alleged that the way in which the commissioners returned land to Tauranga Maori denied them that due process. The issue of individualisation of title is a question of whether tenurial modification was a failure to protect the right of Tauranga hapu to retain the 'full exclusive and undisturbed possession' of their lands. But, before proceeding to make findings on these issues, we make a finding on the claim-specific issue of the wahi tapu reserves promised in the Te Puna–Katikati purchase deed signed by the Marutuahu chiefs.

10.8.1 Hauraki wahi tapu reserves

The purchase deed signed by Ngati Maru and Ngati Tamatera for their interests in the Te Puna–Katikati blocks provided for several wahi tapu reserves, and these were the subject of argument between their counsel and the Crown (see sec 10.4). Neither party was able to find any evidence that the reserves were set aside. The Crown argued that, in view of the lack of evidence, we should not make a finding of any failure to establish the reserves. But if the

90. Document 02, pp 10–14
91. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's, 1993), pp 31–32

promised wahi tapu reserves had been set aside, surveyed, and gazetted, evidence of that would surely have been found either among titles held today by Land Information New Zealand or in the *New Zealand Gazette*, and the reserves would legally exist. Clearly, they do not.

We therefore find that the Crown was in breach of its Treaty obligation to act honourably and in good faith toward its Treaty partner when it failed to provide the reserves promised to Ngati Maru and Ngati Tamatera in the deed of 3 September 1866.

10.8.2 The distribution of returned land and reserves amongst Tauranga hapu

As we discussed in chapter 9, the location of the confiscated block meant that the punishment arising from its retention by the Crown fell more heavily on Ngati Ranginui than on Ngai Te Rangi (see sec 9.3). The subsequent allocation of reserves within the confiscated block favoured certain Ngai Te Rangi individuals, some of whom were 'loyalist' and some 'surrendered rebels'. Neither the allocation of reserves in the Te Puna–Katikati blocks nor the return of land in the remainder of the confiscation district did anything to lessen the burden of confiscation that fell on the hapu of Ngati Ranginui or to ensure that the return of lands to the various Tauranga hapu was 'equitable'. Several hapu of Ngati Ranginui were awarded traditional tribal land at the head of the Wairoa River, but this in no way compensated for the loss of their coastal land within the confiscated block.

We have not been presented with convincing evidence that the return of land in the remainder of the confiscation district compensated 'loyalists' for losses within the confiscated block. Despite assertions by Clarke and Mackay in 1867, and others ever since, that some kind of compensation process took place in the allocation of reserves and the return of land, we know of no example of a 'loyalist' being awarded non-customary land as compensation for a claim within the confiscated block.[92] Crown counsel submitted that Brabant awarded blocks to 'outsiders' as well as to those with customary interests, in order, as counsel put it, to make the return of lands 'equitable as amongst the hapu of Tauranga'.[93] The evidence relied on by the Crown to back this assertion comes from information relating to the award of Te Umuhapuku on Matakana Island and Katimako 1 near Maungatapu that was taken from the minutes of Native Land Court partition hearings in 1912. Despite the fact that 'there was virtually no information' available to him, Judge Browne assumed that the two blocks were 'granted as compensation' by the 'compensation Court' primarily to those entitled to redress as 'loyal natives or surrendered rebels'. The judge was clearly misinformed about the process of returning land that took place at Tauranga in the 1880s. At the Te Umuhapuku partition hearing, a witness made references to 'outsiders' being included by Brabant on the list of owners. These comments clearly refer to non-resident members of hapu with customary rights at

92. See doc A57, p 106; doc A40, pp 36–39
93. Document O2, pp 78–79

Matakana.[94] In short, we have no compelling evidence that those who were awarded Katimako 1 and Te Umuhapuku were awarded the land as compensation for losses elsewhere.[95]

Those hapu least implicated in 'rebellion', such as Nga Potiki, Ngati Pukenga, and Ngati He, had little customary claim to land west of the Waimapu River and were relatively unaffected by the retention of the 50,000-acre block. Other Ngai Te Rangi hapu which had interests in the confiscated block – for example, Ngai Tukairangi, Te Whanau a Tauwhao, and Ngai Tuwhiwhia – and which had both 'rebels' and 'loyalists' among them, were allocated coastal reserves in the confiscated and Te Puna–Katikati blocks where they had customary interests. This, coupled with awards of returned land on the inshore islands and in the east of the harbour, meant that the Crown had relatively little need to compensate them by using customary land belonging to other groups. There were also some instances in which, in return for services rendered to the Crown, reserves in the confiscated block were awarded to those such as Te Arawa who had no apparent customary interests, and this further extended the uneven distribution of land among Tauranga hapu.

The net result of the process was that the Ngati Ranginui hapu Ngai Tamarawaho, Ngati Hangarau, Ngati Rangi, Ngati Kahu, and Ngati Pango were awarded much less of their customary land than Ngai Te Rangi hapu were. This does not appear to have been because they were former 'rebels'. The Government had no qualms about awarding land to erstwhile Ngai Te Rangi 'rebels' such as Te Moananui, Enoka, and Ngatai. Most of the Ngati Ranginui hapu had surrendered and accepted the terms of Grey's peacemaking in 1864, exactly as Ngai Te Rangi 'rebels' had. The failure to treat Ngati Ranginui and Ngai Te Rangi equally when land was returned seems to have stemmed from the belief of Government officials that Ngati Ranginui hapu were 'inferior' and 'debased', and occupied land only on 'sufferance' from Ngai Te Rangi. Such beliefs were held despite the fact that Ngati Ranginui hapu maintained distinct identities, were large and cohesive groupings centred on established kainga, and had acknowledged customary rohe.

The other hapu who were disadvantaged by the allocation of reserves and the return of land were those deemed to be 'unsurrendered rebels'. As we noted above, the awarding of returned land due to Waitaha by customary right was deliberately reduced by the commissioners as punishment for Harakaia's 'rebellion'. The commissioners also sought to exclude those thought to be connected to Hakaraia from the lists of owners they drew up. This meant that Waitaha were denied shares in the allocation of some land in the east of the Tauranga district, such as the Papamoa and Otawa blocks, in which they shared customary interests with some Ngai Te Rangi hapu and Ngati Pukenga. Likewise, the only reserves allocated to Piriraku in the confiscated block were granted to those deemed to be 'surrendered rebels', and the large Whakamarama 1 block was returned to a small, surrendered faction of the hapu. We appreciate that it was difficult for Mackay and Clarke to arrange adequate reserves for

94. Document A40, pp 36–39; doc A57, pp 320–321
95. Document A57(a), pp 39, 80–81

Pirirakau in the aftermath of the Tauranga war and during the bush campaign owing to the lack of contact between Government officials and the hapu. However, a decade after peace had returned to the district, Government agents continued to discriminate against groups they deemed to be 'unsurrendered rebels'. As a result, Waitaha and Pirirakau failed to regain a considerable portion of their rohe.

In light of these conclusions, we find that the Crown breached the Treaty by returning land after the confiscation in a way that favoured some hapu over others. The Crown's failure to apply the principle of equal treatment widened the rift that had already developed between Ngai Te Rangi and Ngati Ranginui after the cessation of hostilities at Tauranga in 1864. Both Waitaha and Ngati Ranginui were clearly prejudiced by the Crown's unequal treatment of Tauranga Maori. We evaluate this prejudice further in chapter 13.

10.8.3 The process of returning land and awarding reserves

Next, we come to conclusions and make findings on the process of awarding lands in the remainder of the confiscation district. We have made a finding on the Government's failure to convene the Compensation Court in chapter 6, and it is not necessary to revisit that finding here. Instead, we examine the process that the Government used at Tauranga in place of the Compensation Court.

As was pointed out by the Crown, the commissioners of Tauranga lands acted under the Commissioners Powers Act 1867. This Act conferred general investigatory powers on those appointed under it. The authority before 1867, when Mackay and Clarke awarded reserves in Te Puna–Katikati and the confiscated block, is unclear. These awards were probably one of the main reasons why the validating provisions of the Tauranga District Lands Act 1867 were deemed to be necessary. The Crown submitted that after 1867 the commissioners were acting, in effect, as a commission of inquiry, but we have not seen any evidence to show that the Government of the period considered this to be the case. Nor did the commissioners behave like a commission of inquiry. For example, not only did they make recommendations to the Crown, but they also made judicial and Executive decisions on its behalf. Furthermore, they did so without the possibility of appeal, except, as was pointed out by the Crown, when they voluntarily allowed a reconsideration of their decisions. Claimants dissatisfied with the commissioners' decisions and seeking redress were dependent on protesting to Government officials or petitioning Parliament.

Claimant counsel made a number of allegations relating to due process. For example, they complained that there was undue delay in the settlement of claims: 18 years elapsed between the appointment of the first commissioner and Brabant's report on the final settlement of claims in 1886.[96] Although the Crown admitted that the commissioners 'took some time to

96. Document N11, p 183

complete the inquiry process', it argued that this was not 'unreasonable in the circumstances then prevailing', which included the fact that the Government had limited resources at its disposal.[97] We accept that we should always take into consideration 'the circumstances then prevailing', but we must also consider Crown actions against Treaty principles. The Government of the day may have considered it necessary, on financial grounds, to require that the officials it appointed to deal with Maori filled a variety of offices. However, in our view this was carried too far. That was certainly the case in respect of the two commissioners charged by the Crown with the main responsibility for settling the awards of Tauranga land. As undersecretary of the Native Department in Wellington, Clarke was absent from Tauranga for much of the time that he was also exercising responsibilities as commissioner of Tauranga lands. And, although Brabant proceeded expeditiously with the awarding of land, he did so while combining the responsibilities of commissioner and Crown purchase agent (among other roles). It was virtually impossible for him to carry out his job of purchasing land as cheaply as possible while at the same time fulfilling the Crown's fiduciary obligation to ensure that Maori received a fair price and kept a sufficient endowment of land. We conclude that the Crown should have provided the commissioners with a better opportunity to complete their task in a timely manner by relieving them of other, conflicting, responsibilities.

Claimant counsel also made allegations of incompetence and bias by the commissioners on the ground that they were military men with no legal qualifications.[98] We note that the Ngati Awa raupatu Tribunal accepted that William Mair, one of the commissioners of Tauranga lands, was biased in his treatment of Ngati Awa.[99] But we accept the Crown's argument that any such bias, if it existed at all, was not significant in Tauranga, since Mair completed only one allocation (and that in association with Brabant). There is not much evidence of bias on the part of the other commissioners. Though Clarke and Brabant had military experience, they were engaged in Government administration or Native Land Court work for most of their careers. Other than the failure, discussed above, by the commissioners to take adequate account of Ngati Ranginui and Waitaha interests, we have found no evidence of bias on the part of either Brabant or Clarke that would enable us to make a finding to that effect. We consider that they usually made reasonable attempts to carry out their task fairly and in fulfilment of instructions, such as they were, from their superiors. We do not consider that the individuals chosen by the Government to be the commissioners were the problem. Rather, it was the system under which they operated that was principally at fault. We do, however, have concerns that the commissioners sometimes expedited the completion of awards to allow Europeans to complete land purchases, and we discuss this issue in chapter 11.

The adequacy of the commissioners' instructions was another subject of complaint from claimant counsel. They alleged that the commissioners received no instructions at all and

97. Paper 2.363, p 16
98. Document N11, p 183
99. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 83

that, when Brabant requested instructions in 1881, he was told to proceed with the settlement of the claims along the lines of Native Land Court proceedings. By contrast, the Crown reminded us of the instructions given to Clarke on his appointment in 1868: namely, that he was to effect a settlement of claims to the remainder of the confiscation district 'as nearly as may be equitable among the Ngaiterangi', having regard to what they had already had reserved for them in the Te Puna–Katikati blocks and to what they had lost in the confiscated block. The Crown argued that Clarke and, later, Brabant needed no further instructions or regulations, since they were able to follow the procedures of the Native Land Court. However, those procedures, as specified in the native land legislation after 1862, required the court to award title according to native custom. In contrast, the instructions to the commissioners from the Native Department also required them to take into account both Grey's promise to return a set portion of the district to 'Ngaiterangi' and the perceived need to compensate some Maori for losses in the confiscated block. In effect, the commissioners were expected to perform the tasks of the Compensation Court and the Native Land Court at the same time but with little specific guidance on how to go about it. The unequal treatment of Tauranga hapu outlined in the preceding section arose precisely because of the contradictory nature of the commissioners' task. The Crown's decision to create and operate a process for returning land in Tauranga that attempted to combine the practices of the courts with the Executive functions of Native Department officials precluded the setting up of an adequate process to allow Tauranga Maori to establish their loyalty and be compensated. It also meant that it was impossible to set up a fair process for the allocation of reserves to surrendered 'rebels'. The regime under which reserves were allocated and land was returned to Tauranga Maori was in no way analogous to the compensation process outlined in the provisions of the New Zealand Settlements Act 1863.

In light of these conclusions, we find that the Crown failed actively to protect Tauranga Maori, as required by the Treaty, by denying them the due process of a fair, timely, and judicial return or reservation of land following the confiscation of the Tauranga district in 1865.

10.8.4 Individualisation of tenure

The proclamation of Tauranga Moana as a district under the New Zealand Settlements Act extinguished Maori customary tenure over the district. All land became Crown land, and when part of that land was returned to Tauranga Maori, it was by Crown grant in individual but usually undivided shares. The Crown and the claimants disagreed as to whether the Government was justified in extinguishing customary title at Tauranga. The claimants' arguments were based on the assumption that, under the Treaty, the Crown could not unilaterally alter Maori rights to land. The Crown countered that, in exceptional circumstances, customary title could be legally extinguished. The Crown also submitted that, in the context of

official thinking in the second half of the nineteenth century, there were good reasons for the individualisation of tenure.

We begin by discussing the Crown's position. We disagree with the Crown's proposition that the judgment in *R v Symonds* recognises 'the likelihood' that the Crown could unilaterally extinguish customary title in times of war. Rather, it states that, 'at least in times of peace', customary title could not be extinguished without the consent of Maori owners. The judgment examines the status of customary title in times of peace; it says nothing about its status during states of emergency or rebellion. In Treaty terms, we reiterate that, even if the Crown perceived a war, a state of emergency, or a rebellion to be unfolding, it does not necessarily follow that Maori rights could be ignored. In a situation such as that at Tauranga, where hostilities were initiated by the Crown, it was clearly not legitimate for the Crown subsequently to use any response to those same hostilities as justification for the suspension of any Maori Treaty rights.

We agree with the Crown, however, that there was a prevailing philosophy, at least among New Zealander settlers, if not throughout settler societies across the British Empire (and particularly in the tropical parts of the Empire), that regarded individualisation of tenure as a necessary part of the 'civilisation' of indigenous populations. However, we would warn against any oversimplification of this point. In the late 1850s, there was considerable debate among colonists as to how Maori should best hold land. Several proposals were mooted, and in some cases steps were taken to implement ideas that involved acknowledging Maori title to land without individualising the tenure.[100] For example, in 1858 Native Minister Christopher Richmond proposed 'issuing certificates of title to the Natives . . . without extinguishing the Native title'.[101] The radical modification of Maori land tenure that occurred in the period after the Native Lands Acts were enacted and the central North Island confiscations enforced was not an inevitable result of European mindsets but a sustained and deliberate policy choice on the part of the Government.

While there may have been considerable European support for the individualisation of tenure at Tauranga (and elsewhere), we do not believe that the idea gained much Maori support. We have found no evidence that Tauranga Maori supported it, either at the Kohimarama conference in 1860 (assuming they were even aware of it) or elsewhere. The Kingitanga was explicitly opposed to individual dealing in land, as we explained in chapter 3, and many Tauranga Maori supported that movement. We accept that the Crown was technically correct in arguing that an individual title was necessary in 1865 if Maori were to exercise the franchise. However, the Government had other means open to it if enfranchising Maori was a concern. Two years later, in 1867, the Government provided for Maori representation in

100. See 'Report of Board Appointed by his Excellency the Governor to Inquire into and Report upon the State of Native Affairs', in 'Copy of Dispatch from Governor T Gore Browne to the Right Hon H Labouchere, MP' July 23, 1856, BPP, vol 11, pp 475–483; Native Territorial Rights Act 1858, s 1

101. Quoted in doc M11, p 18

Parliament through the establishment of the Maori seats in the House of Representatives, and it granted Maori a universal adult male franchise.

Previous Tribunals have found that the imposition of tenure reform, whether by confiscation or through the determination of title in the Native Land Court, was a clear Treaty breach with severe prejudicial affects on Maori.[102] We have examined the evidence before us in relation to Tauranga and have found no reason to consider this region any differently. Grey's promise to return three-quarters of the district did not necessitate the extinguishment of customary title over the whole of it. Crown counsel submitted that this taking was necessary: the Government wanted to ensure that the punishment of confiscation was 'equitable', and it planned to do this by compensating those who lost land in the confiscated block with other land in the district. However, as we have found, the Government did not, in fact, spread the compensation equally among hapu. Had the Compensation Court been in operation in Tauranga, the Government would have had the option of reinstating customary title in the land outside of the confiscated and Te Puna–Katikati blocks by abandoning that land under section 6 of the New Zealand Settlements Amendment and Continuance Act 1865. Furthermore, Mackay noted that returning the remainder land to customary title was in fact the preferred option of Tauranga Maori.[103] But the Executive branch of Government was unwilling to relinquish its control of the process by which land was returned, and it never seriously considered abandoning land within the Tauranga confiscation district. We note, however, that, even if customary title had been allowed to endure at Tauranga, it would have been eventually extinguished by Native Land Court title determinations. The feature that marks Tauranga Moana apart from other districts is that, although customary title was extinguished across the entire district instantly in 1865, title to most of the land that was eventually returned to Maori was not vested in them for between 15 and 20 years.

In our view, there are three key reasons why the destruction of customary tenure at Tauranga was both in breach of the principles of the Treaty and prejudicial to the interests of Maori. We outline these in turn. First, the individualisation of tenure took place without the consent of those it affected. The Crown could not alter something as fundamental to what it means to be Maori as the relationship of hapu to their land without consent if it wanted to remain consistent with its Treaty obligation to acknowledge and protect the rangatiratanga of Maori over their land. The unilateral nature of the imposition of individual title, through the confiscation and return of land, was at odds with the Maori text of article 2 of the Treaty, which required the Crown to allow for the continued exercise by Maori of rangatiratanga over their land.

102. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 184–185; Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 129; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 2001), p 139

103. Mackay to Rolleston, 31 July 1867, Tauranga confiscation file, DOSLI, Hamilton (RDB, vol 124, pp 47,565–47,567)

10.8.4

Secondly, the failure to permit Tauranga hapu to exercise rangatiratanga in their customary ways undermined their very foundations. Even land supposedly returned in trust for hapu was placed in the hands of individuals. None of the land taken was returned collectively to any Tauranga hapu. By deliberately taking the control of the land out of the hands of hapu, as collective entities, the Crown took away the ability of those hapu to manage their own economic and social endowment. Relationships between the members of hapu were reordered by giving named individuals on a 'certificate' or Crown grant absolute control over the fate of land that formerly belonged to the hapu collectively. As a result, tino rangatiratanga was undermined and the chiefs' relationships with their hapu were fundamentally modified. The Crown undertook in both the preamble and in article 2 of the Treaty to protect the 'rangatiratanga' of Maori over their land and other resources. This required, by definition, the protection of hapu rights, because no other entity existed with comparable authority over land in Maori society. However, instead of protecting the hapu of Tauranga, the Crown actively sought to diminish their authority.

Thirdly, the individualisation of tenure made land susceptible to alienation – an outcome that was at odds with the Crown's fiduciary obligation to protect Maori from excessive land loss. Crown pre-emption was included in the Treaty as a protective measure, placed there to ensure that Maori land was not exposed to the worst excesses of private land dealing. The unilateral individualisation of tenure, together with the simultaneous abandonment of pre-emption, was fundamentally at odds with this protective undertaking because it made Maori land vulnerable to being lost to private purchasers.

Since the late nineteenth century, governments have repeatedly claimed that substantial justice was done by the return to Maori of three-quarters of the Tauranga district after it was confiscated. As we discussed in chapter 7, the Te Puna–Katikati purchase prevented the Crown from being able to return anything approaching the three-quarters of the district that Grey had promised at the pacification hui. None the less, according to one estimate, 152,793 acres of the 290,000 acres that made up the district were eventually returned to Maori by Crown grant, either as 'returned land' or as 'reserves'.[104] But the means by which this land was returned precluded Tauranga Maori from receiving anything close to what we would consider to be 'justice'. The slow, ad hoc, and arbitrary process used to return land in place of the Compensation Court led to an uneven distribution of returned land and reserves that favoured some hapu and individuals over others. In addition, land and reserves were returned in individual title. This was a unilateral and deliberate destruction of Maori customary tenure on the part of the Crown, and as such was an attack, in defiance of the Treaty, on the very basis of the Tauranga hapu's existence.

104. Document 02, p 58

10.9 Chapter Summary

The main points in this chapter are as follows:

- Between 1865 and 1886, the Crown 'returned' approximately 17,000 acres of reserves in the confiscated and Te Puna–Katikati blocks and 135,000 acres of land in the remainder of the confiscation district. With the exception of a few thousand acres of reserves in the confiscated block awarded to Maori as a reward for services to the Crown, all this land was returned to those with at least a partial customary interest in it.
- The land-return process individualised title to all land awarded to Maori in the district and was undertaken by the commissioners of Tauranga lands under minimal statutory or central Government oversight. However, all awards – both those made before and those made after 1867 – were made legally 'valid' by the Tauranga District Lands Act 1867. At Tauranga, the land-return process was ad hoc, slow, and arbitrary in nature. It also did not allow Tauranga Maori the right to appeal title determination in the way that Maori could in most other districts.
- The land-return process particularly disadvantaged the hapu of Ngati Ranginui, which had already lost much of their rohe through the Crown's acquisition of the confiscated and Te Puna–Katikati blocks. Ngai Te Rangi hapu were treated more generously in the allocation of returned land because a larger percentage of their rohe fell outside of the confiscated block. The punishment for 'rebellion' was not shared equally amongst the hapu of Tauranga. Those considered 'unsurrendered rebels' – largely members of Pirirakau and Waitaha – were also deliberately discriminated against by Government officers when returning land.
- In returning land in the manner described, the Crown breached the Treaty in three key ways. First, by failing to treat Maori equally in the 'return' of confiscated land, the Crown breached the principle of equal treatment. Secondly, because the process by which land was returned was not fair, expeditious, or independent, it breached the Treaty principle of active protection. And, thirdly, and most crucially, by carrying out title individualisation without the consent of those affected and without taking account of its duty actively to protect Maori, the Crown failed in its Treaty obligations.

CHAPTER 11

ALIENATION OF AWARDED LAND

11.1 Introduction

In this chapter, we discuss the sale and lease of land awarded to Tauranga Maori after the confiscation. Although in excess of 150,000 acres of land within the confiscation district were 'returned' to Tauranga Maori, more than half of this land had been alienated by 1886.[1] Our examination of these alienations is divided into three parts – the alienation of reserves in the confiscated and Te Puna–Katikati blocks, and private and Crown purchasing in the remainder of the confiscation district. After this, we detail the impact of land loss on Tauranga Maori and summarise claimant and Crown submissions on this issue. Our general findings (see secs 11.6, 11.8) address two issues repeatedly raised by the claimants in their submissions: namely, the way the Crown administered the process by which land was alienated in Tauranga and the Crown's alleged failure to ensure that Tauranga Maori were left sufficient lands for their future needs. We also make specific findings on two alienations in cases where claimants alleged breaches of the Treaty but those alleged breaches are not accounted for in our general findings: the Crown's purchase of Mauao (see sec 11.3.2) and the private purchase of part of Matakana Island (see sec 11.4.2).

This report covers alienations to 1886. We do not discuss the construction of roads, telegraph lines, and other public facilities on Maori land. Nor do we discuss the impact of settlement and land development on the use that Tauranga Maori made of rivers, harbours, and swamps, or their tenure of such areas. In saying this, we note the closing submission of the Wairoa hapu that they 'have never consented to the extinguishment of their rights in respect of the Wairoa River and, in treaty terms at least, it follows that those rights remain extant'.[2] There was little evidence presented to us relating to any of these issues before 1886. In the twentieth century, they became much more prominent and will be dealt with, if necessary, in our stage 2 inquiry.

1. Document A57, p 287
2. Document N14, para 71

11.1.1 Alienation and the land-return process

During the years from 1864 until the end of our period in 1886, a large proportion of the Maori estate in the North Island was alienated by Crown and private purchasing.[3] This process accelerated in the 1870s under the economic policies of Julius Vogel and the native policy overseen by Donald McLean.[4] As we have previously noted in chapter 6, for much of this period there was considerable conflict between the exponents of Crown purchases of Maori land and close settlement schemes and the proponents of a free market in Maori lands and large runholdings. However, there was far less disagreement over the ultimate objective: that Maori land should be acquired as rapidly and as comprehensively as possible and be settled by immigrants who would make it 'productive'.[5] In Tauranga before 1886, the close settlement of land for the purposes of productive farming was confined to parts of the confiscated and Te Puna–Katikati blocks. For various reasons, there was little pastoralism of the kind that was practised in the eastern regions of the North and South Islands, where extensive runs were held under licence on Crown land or were leased or purchased from Maori.[6] Much of the land in the Tauranga district was acquired by speculators not for productive farming but because it was assumed to be rich in gold or kauri gum, or because it was clothed with millable timber.

As discussed in the previous chapter, confiscated land awarded to Maori in Tauranga was granted in individual undivided shares. This tenurial reform paved the way for the direct private purchasing of Maori land that followed. In effect, the way confiscated land was returned performed the same function as a determination of title by the Native Land Court in non-raupatu areas. In Tauranga, the commissioners drew up lists of owners for each block that were often referred to as 'certificates'. Such a certificate was not a tradeable title; rather, it was a recommendation to the Governor as to whose names should be included on the Crown grant. In the same way, if a restriction on alienation was included on one of the commissioners' lists, it was not a legally binding restriction: it was merely a recommendation that a restriction should be placed on the Crown grant when it was issued. As we have noted, the land within the confiscation district was Crown land, and therefore a Crown grant had to be issued before title to any land awarded to Maori could be transferred to Pakeha purchasers.

3. Maori land holdings in the North Island were roughly 20 million acres in 1863. This had been reduced to about 11 million in 1890. Of the land that passed out of Maori hands, about 3.5 million acres were confiscated and the rest purchased: see David Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 51–62.

4. See Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), pp 231–232

5. Tom Brooking, 'Use It or Lose It: Unravelling the Land Debate in Late Nineteenth-Century New Zealand', NZJH, vol 30, no 2 (1996), pp 141–161

6. Keith Sinclair, *A History of New Zealand*, revised ed (Auckland: Penguin Books (NZ) Ltd, 2000), p 165; W J Gardner, 'A Colonial Economy', in *The Oxford History of New Zealand*, edited by Geoffrey W Rice, 2nd ed (Auckland: Oxford University Press, 1992), p 162

11.1.2 Restrictions on alienation

Restrictions on alienation were the subject of much disagreement between the claimants and the Crown in their submissions to the Tribunal. The claimants argued that the regime implemented by the Crown to place restrictions on land alienation at Tauranga was wholly inadequate to ensure that the Crown's obligation actively to protect Maori interests was fulfilled. In contrast, the Crown submitted that the regime provided sufficient superintendence of the alienation process, while not denying Maori the opportunity to alienate land if they so desired. We consider this issue throughout the chapter, but first we set out the main features of the regime at Tauranga.

After 1862, in areas where the Native Lands Act was in force, a restriction on alienation could be placed on a certificate of title or a Crown grant of Maori land at the discretion of the Governor and upon the recommendation of the Native Land Court.[7] The confiscated districts were subject to a similar arrangement under section 6 of the Confiscated Lands Act 1867, which gave the Governor the power to make returned land subject to any restrictions or limitations that 'he may think fit'.[8] The Tauranga District Lands Act 1867 also gave the Governor wide-ranging powers to award land and impose conditions on the awards. In practice, it was left to the commissioners of Tauranga lands, acting like Native Land Court judges, to recommend that restrictions be placed on awarded blocks. A restriction usually forbade the sale, or lease for more than 21 years, of a block without the prior consent of the Governor.[9]

It seems that the commissioners received little advice from higher authorities on how and when to employ restrictions on alienations. Clarke stated in 1877 that all the reserves allocated to 'loyalists' in the confiscated and Te Puna–Katikati blocks were awarded without restrictions, so as to enable the 'loyal natives . . . to do as they liked with them'. On the other hand, it was recommended that a restriction should be placed on the Crown grant when an award was made to a surrendered rebel.[10] Restrictions on alienation were placed on many, although not a majority, of the Crown grants of land returned in the remainder of the confiscation district.

Alienation restrictions imposed by recommendation could also be withdrawn by recommendation. Intending sellers could apply to the Governor to have the restrictions removed. In such cases, the applications were referred to the Native Department, and from there they went to the commissioners of Tauranga lands, who gave advice to the Governor as to whether the restriction should be removed. Another step in the process was added with the appointment of trust commissioners under the Native Lands Frauds Prevention Act 1870. These commissioners had to vet every transaction involving the removal of an alienation restriction and then issue a certificate attesting that:

7. Document M11, pp 27–28
8. Quoted in doc M11, p 10
9. The use of restrictions on alienation other than leases of less than 21 years was first introduced in the Native Lands Act 1867 and subsequently become the norm when alienation restrictions were imposed on Maori land: see doc M11, pp 36, 59.
10. Quoted in doc K3, p 31

- the proposed transaction was made with the knowledgeable consent of the sellers;
- the transaction did not affect the existence of any known trust;
- liquor and firearms were not part of the price paid for the land;
- the sellers had received payment; and
- the sellers had sufficient other land for their maintenance.

As Crown witness Robert Hayes pointed out to us, the trust commissioners' role was only to inquire into whether these criteria had been met.[11] Trust commissioners had responsibility for large districts and they did not have the resources to investigate most transactions first hand. As a result, they were often reliant on the testimony of the buyers, the sellers, and officials resident in the district where the purchase was taking place.[12] Examples of trust commissioners refusing to issue a certificate are rare. Trust commissioner Theodore Haultain, who was responsible for Tauranga and the rest of Auckland province, examined 2524 deeds executed in the province between 1874 and 1884. He declined to issue a certificate for 69 of them, but his refusal was usually due to procedural matters not directly related to the Native Lands Fraud Prevention Act. Only one certificate was refused because the vendor had no other land, and only seven because the land was found to be held in trust.[13]

In the early 1880s, Native Minister John Bryce spelt out the criteria that the commissioner of Tauranga lands was to use when making recommendations to the Governor on requests to have restrictions removed. Some of these criteria were similar to those used by the trust commissioners in issuing their certificates under the Native Lands Fraud Prevention Act. Bryce instructed Brabant that, before recommending that a restriction be removed, he was to ascertain that the owners were unanimous in their decision to sell, were to receive a fair price, and were to retain sufficient land for their maintenance if the alienation proceeded.[14] In practice, recommendations for the removal of restrictions that were forwarded by the commissioner of Tauranga lands were nearly always accepted by the Governor. The restrictions were regarded by the commissioner and the Native Department as 'hurdles' for the purchasers, designed to slow the process of alienation but not prevent it altogether. They hoped that, because of these delays, Maori would gain more time to assimilate into Pakeha society.[15]

11. Document M11, pp 36–38

12. Instructions issued to trust commissioners on their appointment stated that the Government's desire was for the Native Lands Frauds Prevention Act 1870 to operate 'at as little expense as possible'. Commissioners were instructed not to travel to remote districts but to rely on the testimony of Government officials resident in the area: see Robyn Anderson, 'The Crown, the Treaty, and The Hauraki Tribes 1800–1885', report commissioned by the Hauraki Maori Trust Board (Wai 686 R01, doc A8), p 321.

13. See Anderson, pp 322–324

14. Document M11, p 61

15. Native Minister Richmond stated in 1867 that the object of the restriction policy was to give 'a somewhat longer time and better chance for the adoption of European habits of mind before the Maori settles down to the poverty and necessity for labour to which he must in most cases come': J E Murray, *Crown Policy on Maori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Report (working paper: first release), February 1997, p 29.

In 1885, the Native Minister appointed George Barton a special commissioner to investigate the operation of the regime restricting alienation.[16] As part of his inquiry, Barton reported on applications to remove restrictions on eight blocks of Tauranga land. We discuss some of Barton's concerns regarding the lifting of restrictions on specific blocks at section 11.4.5.

One other apparent restriction on the alienation of land awarded to Maori at Tauranga needs to be mentioned. This was a Government notice, prohibiting the purchase of Maori land, that was published in newspapers in 1878 following a Native Affairs Committee hearing into a disputed sale of Tauranga land. The committee was concerned at the amount of land being alienated and the methods by which it was being purchased.[17] We discuss the committee's investigation further at section 11.4.4.

11.2 Alienation of Reserves in the Confiscated and Te Puna–Katikati Blocks

11.2.1 Introduction

We noted in section 10.3.1 that the majority of reserves within the confiscated block were awarded to no more than one or two 'loyalist' or surrendered Ngai Te Rangi individuals. There were usually no restrictions on the alienation of this land, and most of it was in fact quickly alienated once grants were issued. In contrast, the smaller amount of land in the confiscated and Te Puna Katikati blocks that was returned to large lists of owners, or was held in trust by individuals on behalf of hapu (usually where hapu had kainga and cultivations), was less likely to be alienated. In 1886, the majority of reserves set aside for the use of hapu within the confiscated block remained in Maori ownership.

The pattern of land allocation and alienation in the Te Puna–Katikati blocks was similar. The allocation of reserves in Te Puna–Katikati was largely complete by 1868, and by the end of 1869 one-quarter of the number of these lots (40 per cent of their total acreage) had been sold. By 1886, more than half the lots awarded in Te Puna–Katikati had been sold.[18] As was the case in the confiscated block, the bulk of these sales were of land awarded to one or two 'loyalist' or surrendered Ngai Te Rangi rangatira.

The histories of blocks of other classes of awarded land, such as endowment reserves, town allotments, and half-caste grants, have been harder to trace. Claimant submissions rarely touched upon them, and there was only fragmentary documentary evidence available to us. Where the evidence allows, we deal briefly with the history of these lands at section 11.2.4.

16. Murray, pp 71–76
17. Document M11, p 47
18. Document K3, p 83

11.2.2 Individual awards

(1) Alienation of individual awards in the confiscated block

A full list of all known sales and leases of reserves in the confiscated block is included in appendix IV. As we have indicated, land granted to one or two individuals was rapidly alienated. This is unsurprising where land was granted to rangatira in areas where they had had few, if any, customary rights. In some instances, Pakeha entered into agreements to purchase the lots before they were awarded and granted to the Ngai Te Rangi rangatira. As Mackay stated at the 26 March 1866 meeting, 'Whitaker made several arrangements for reserving pieces of land for natives . . . to enable them to fulfil engagements entered into with Pakeha for the sale of some land.'[19]

Most sales of individual grants in the parishes of Te Puna and Te Papa took place between 1866 and the early 1870s.[20] These transactions clearly include sales of land that Mackay said had been granted in order to facilitate prior dealings between Pakeha and Tauranga Maori. Nearly all these conveyances were arranged either before Crown grants were issued or soon after. Lawyers representing the buyers often petitioned the commissioner of the time (or Whitaker) to hasten the issue of a Crown grant to finalise an alienation.[21]

The earliest recorded sale was of two Te Papa lots at Otumoetai, sold by Tomika Te Mutu and Te Kuka Te Mea in December 1866.[22] The same two vendors sold a 100-acre lot at Bethlehem three days later.[23] Te Mutu and Te Kuka were from the Ngai Te Rangi hapu Ngai Tuwhiwhia. A 'loyal' chief, Te Mutu had attended Kohimarama and had been party to the original agreement to sell Te Puna–Katikati. The sale of the lots at Otumoetai appears to have precipitated the relocation of Ngai Tuwhiwhia from Otumoetai to the inshore island of Rangiwaea and to Whareroa. Subsequently, Te Mutu and Te Kuka claimed that the move and sales had been forced upon them. Te Mutu wrote to Whitaker: 'I have no claim to Rangiwaea [but] the Colonel [Greer] told me to go thither to the island.' Te Kuka later wrote to Native Land Court Chief Judge Fenton stating that he did not know why his land at Otumoetai had been 'taken away' when he had not taken up arms against the Queen.[24]

In 1879, Clarke commented on these and other early sales of awarded land before the Native Affairs Committee. He stated:

> At the meeting in March 1866, certain reserves were made absolutely to the Natives before I returned from Auckland. There was one block of land of 190 acres made over to Hamiora Tu and Te Ritimana [*sic*], just on the other side of the Gate Pa. Another reserve was made to

19. Quoted in doc A57, p 40
20. See Clarke's list of 'Lands Awarded by the Agent of General Government in March 1866', which lists alienations in the parish of Te Papa: doc A57, pp 219–220.
21. Document A57, p 123
22. Document K3, p 37. These lots were actually transacted under the titles of Otumoetai 34 and 36. When all lots in the parish of Te Papa were consolidated, they were renumbered as Te Papa 105 and 109: see doc A57, p 123.
23. Document K3, p 37
24. Document A57, p 235

> them at Otumoetai . . . Mr Chadwick bought a block near Gate Pa, Mr Craig bought one Lot, Mr Black another Captain Fraser another, and Mr Chadwick a second Lot. I was not aware of the circumstances until the Natives came to complain that the land at Gate Pa was sold. I made inquiries, and, to my astonishment, found that the Crown grant had been issued to two individuals.[25]

Although in 1879 Clarke seemed to be arguing that these awards (Te Papa 20, 105, 109, 111, 112) had been intended as inalienable reserves, there was no trust written into the grants (see sec 10.3.1). As far as can be ascertained from the available evidence, no restrictions on alienation were placed on them. Some of these early Crown grants, especially at Otumoetai, were for land the vendors had a stake in through occupation or ancestry. It is possible that in 1866 Clarke meant them to be granted in trust for hapu, with restrictions on alienation, but any such hope appears to have given way to Whitaker's desire to facilitate the completion of pre-existing purchase agreements.

Land awarded to Ngai Te Rangi rangatira in areas where their customary interests had been relatively weak, which included the 13 seven-acre 'Pirirakau expedition' grants, other lots in the parish of Te Puna, and Hamiora Tu and Retimana Te Ao's joint awards at Judea, were quickly sold. The lots awarded in the parish of Te Papa to Ngati Pukenga individuals, according to their Te Puna–Katikati purchase deed, were also sold soon after their allocation.[26] The leasing of individually granted lots in the confiscated block was uncommon, but leasing was used occasionally for lots granted in trust to hapu, usually as a precursor to outright sale.

As we have been indicating, the land awarded to individual Ngai Te Rangi and quickly alienated by them was of two types. The first included land where Ngai Te Rangi had previously held strong customary rights, such as at Otumoetai. Since, in Maori custom, those rangatira would not have had exclusive title, the award of the land to one or two individuals automatically dispossessed other right-holders. The alienation of this land by a select group of rangatira caused resentment among other Ngai Te Rangi, who felt that they had lost their customary land and received no compensation.[27] The second category of land awarded to Ngai Te Rangi rangatira was in areas where Ngati Ranginui hapu had stronger customary claims. This included land that was awarded to and alienated by Ngai Te Rangi rangatira across the Wairoa River (an area then called Otumoetai West). Pirirakau had stronger rights than Ngai Te Rangi to this land. Likewise, Ngati Hangarau had stronger customary rights to land that was granted to individual Ngai Te Rangi rangatira at Bethlehem, as did Ngai Tamarawaho to land to the immediate south of the Te Papa Peninsula. All these Ngati Ranginui hapu had good cause to resent the fact that such land had been granted to Ngai Te Rangi rangatira and then alienated for a quick profit.

25. Quoted in doc A57, p 122
26. Document M2, pp 62–64
27. Document A57, p 122

11.2.2(2)

(2) Alienation of individual awards in Te Puna–Katikati

As can be seen from table 2 in appendix IV, the pattern of Ngai Te Rangi rangatira finalising the sale of awarded land soon after it had been allocated to them individually was repeated in Te Puna–Katikati. Very few of these reserves had restrictions on alienation. In 1868 and 1869, Ngai Te Rangi leaders such as Hohepa Hikutaia, Te Moananui Maraki, Kiepa Te Amohou, Raniera Te Hiahia, Te Kuka, Enoka Te Whanake, Hamiora Tu, and Hori Tupaea sold most of their individual awards. The reserves in Te Puna–Katikati were sold to a variety of Pakeha, including settlers, Government officials and agents, and lawyers and businessmen from Auckland. Among those in the employ of the Crown were Richard Gill, clerk to the resident magistrate at Tauranga in the late 1860s and later under-secretary of the Native Land Purchase Department, and John Young, a Government land purchase agent in the western Bay of Plenty. In purchasing reserves in Te Puna-Katikati, Gill and Young were acting to further their own private interests. However, as we discuss later in the chapter, from the mid-1870s they also became involved in purchasing returned land in the remainder of the confiscation district on behalf of the Crown.

11.2.3 Hapu awards

(1) The alienation of hapu awards in the confiscated block

The fate of land that was awarded 'in trust' to hapu tended to depend on which hapu received it. The reserves granted to Ngai Te Rangi hapu at Otumoetai and in the parish of Te Puna were either quickly sold outright or leased and sold later. In contrast, awards to Ngati Ranginui hapu at Judea, Bethlehem, and in the parish of Te Puna still remained in the hands of these hapu in 1886, with the exception of Ngai Tamarawaho's Te Papa lot 115 at Judea. Unfortunately, the evidence on the early history of the grants 'in trust' for hapu in the confiscated block is sketchy. It is not clear how often a trust was specifically written into the grants, or how often it was merely assumed such a trust existed. However, in cases where we have sighted copies of the Crown grant, such as the Ngati Rawhare and Ngati Kuku grants at Te Puna and the Te Whanau a Tauwhao grant at Otumoetai, a trust was written into the grant. We therefore assume that most hapu awards in the parishes of Te Puna and Te Papa were formally granted in trust.[28]

It seems likely that Ngai Te Rangi hapu at Otumoetai, who were in the process of relocating to Rangiwaea and Whareroa, sold or leased their hapu awards as their rangatira sold individual awards. On the other hand, most of the Ngati Ranginui hapu stayed on their kainga and refused to sell land, even though Ngai Te Rangi rangatira, with individual lots, were selling land around them. As far as can be ascertained, all the lots granted in trust to Ngai Te Rangi hapu at Otumoetai (Te Papa 103 to Ngai Tauwhao; 21, 107, and 108 to Ngati Kuku; and 110 to

28. See 'Crown Grants', Tauranga confiscation box 4, folder 23, DOSLI, Hamilton (RDB, vol 126, pp 48,517–48,597)

Ngati Kahurere) were leased to Pakeha by the early 1870s.[29] Presumably, they were not immediately sold because they had been granted in trust.[30] However, all of them were eventually sold.

In contrast, Ngati Ranginui hapu managed to retain most of their allocations, at least until 1886. Ngati Hangarau retained lots 16 and 154 at Bethlehem. The Wairoa hapu retained their awards, also near Bethlehem. The exception to this pattern was the sale of the 100-acre Te Papa lot 115 at Judea. This lot was awarded to two individuals, Paraone Koikoi and Wairoa, 'in trust for the Ngaitamarawaho tribe' in 1871. Even though it was supposedly awarded for hapu use, no restrictions were placed on its alienation. It was leased in 1871 to David Lundon, the mayor of Tauranga, and subsequently sold to him in 1872 by Kohu Paraone, Wairoa, Anaru Haua, Ataiti, Rapata, Hore Rahipere, Wetini, Penehamine, and Te Maru. Neither the exact nature of the sale nor the reason for the lack of any restrictions on the block are known.[31] We noted in chapter 10 that, in addition to hapu awards along the harbour, Ngati Ranginui hapu were granted interests in several inland blocks in the parish of Te Papa. Most of this land was not awarded until the mid-1880s, and none was alienated, as far as we are aware, before 1886.

(2) Alienation of hapu awards in Te Puna–Katikati

Several lots in Te Puna–Katikati were also sold by one or two individuals soon after they were awarded, despite apparently having been awarded for the benefit of their hapu. Much of the land awarded to Ngati Haua and Ngati Tokotoko on the Omokoroa Peninsula, and to Ngati Tamawhariua at Rereatukahia, was alienated soon after being granted. Some of it was under negotiation before being granted, and no alienation restrictions were placed on the grants. Other lots were leased before being purchased.

Gill, acting as a private purchaser, was the key player in the purchase of hapu awards in Te Puna–Katikati. He bought three lots from Hohepa Te Kai and Te Moananui Maraki at Rereatukahia in the parish of Tahawai, between December 1868 and November 1869. He also bought another lot, second-hand, from the surveyor Henry Skeet for £80. Skeet had paid Te Moananui £37 10s for this lot.[32] Gill leased a further lot at Rereatukahia from Hamiora Tu in September 1870, and it was later sold to William Kissling, an Auckland lawyer, in January 1877 for £50. Kissling put the land in a trust for Gill's daughter Emily and her fiancé, Henry Clarke (who had originally been involved in awarding the reserve).

The reserves alienated at Rereatukahia by Te Moananui (Tahawai lots 12, 13, and 14) were awarded to Te Moananui and his sister Ngarae, ostensibly for the benefit of their hapu Ngati Tamawhariua. Te Moananui's relatives later contested the sale of these lots, together with other alienations by Te Moananui of land in Te Puna–Katikati and on Matakana. In 1876 and

29. Document A57, pp 219–220

30. One hapu grant that was immediately sold was the Ngai Tuwhiwhia award in the parish of Te Puna (lot 9). It was sold to John Chadwick by Kuka Te Mea in June 1868: see doc K3, p 41.

31. Document F3, pp 92–93

32. Document K3, pp 45–46

1878, Ngarae's daughter, Ani, petitioned Parliament, stating that the land had been awarded for the hapu. According to Ani, Ngarae died before Gill purchased Tahawai lots 13 and 14, but no successors were appointed before the sale.[33] In August 1878, despite the fact they had already been sold, these lots came before the Native Land Court for a succession hearing. Ani stated that part of the land had been willed to her and her siblings by her mother but had secretly been sold by Te Moananui after Ngarae's death. She said that the will had been 'delivered' to Gill and Clarke. Another witness, Te Moananui Wharenui (not Te Moananui Maraki, mentioned above, who sold the reserves), stated that the lots were 'ancestral lands' belonging to Te Moananui Maraki's tribe, and that the tribe had specifically asked Clarke and Mackay to return the lands to them. He went on to say that Maori who claimed interests in the land had occupied it since hearing of Gill's purchase but had been warned by him to leave.[34]

The case was adjourned until November 1879, when Clarke gave evidence to the court. He stated that, after Ngarae had died, Te Moananui came to him seeking permission to sell the land so he could purchase food. Clarke had made a certificate in favour of Te Moananui only after receiving assurance that Ngarae's children would be given land in some Matakana blocks. The court ruled that Gill's purchases were 'bona fide'.[35] Native Minister John Ballance confirmed this view when he visited Tauranga in 1885. In reply to some who asserted that Te Moananui had no right to sell, Ballance replied: 'It is quite clear that Te Moananui had a Crown grant, and therefore had a right to sell the land.'[36] This statement succinctly sums up the Government's attitude towards the alienation of land awarded for the use of hapu in Tauranga.[37]

As a second case study, we examine the fate of the reserves awarded to Ngati Tokotoko and Ngati Haua at Omokoroa. According to the Ngai Te Rangi Te Puna–Katikati deed, 400 acres at Omokora were to be returned to 'Ngawaka Patuhoe and others of Ngati Tokotoko'. However, the Crown grant had neither restrictions on alienation recorded on it nor any trust written into it. Gill paid £83 5s for the two lots in September 1868.[38] He sold them to Tice Gellibrand in 1877 for £650 and leased the remainder of the Ngati Tokotoko land at Omokoroa (Te Puna lots 187 and 188, of 67 acres) in 1870 for £4 per annum. Gill transferred the lease to Gellibrand in 1876 for £300, and Gellibrand purchased the two lots in 1877 from

33. 'Reports of Native Affairs Committee', AJHR, 1876, I-4, pp 21–22; 'Reports of Native Affairs Committee', AJHR, 1878, I-3, pp 6, 12

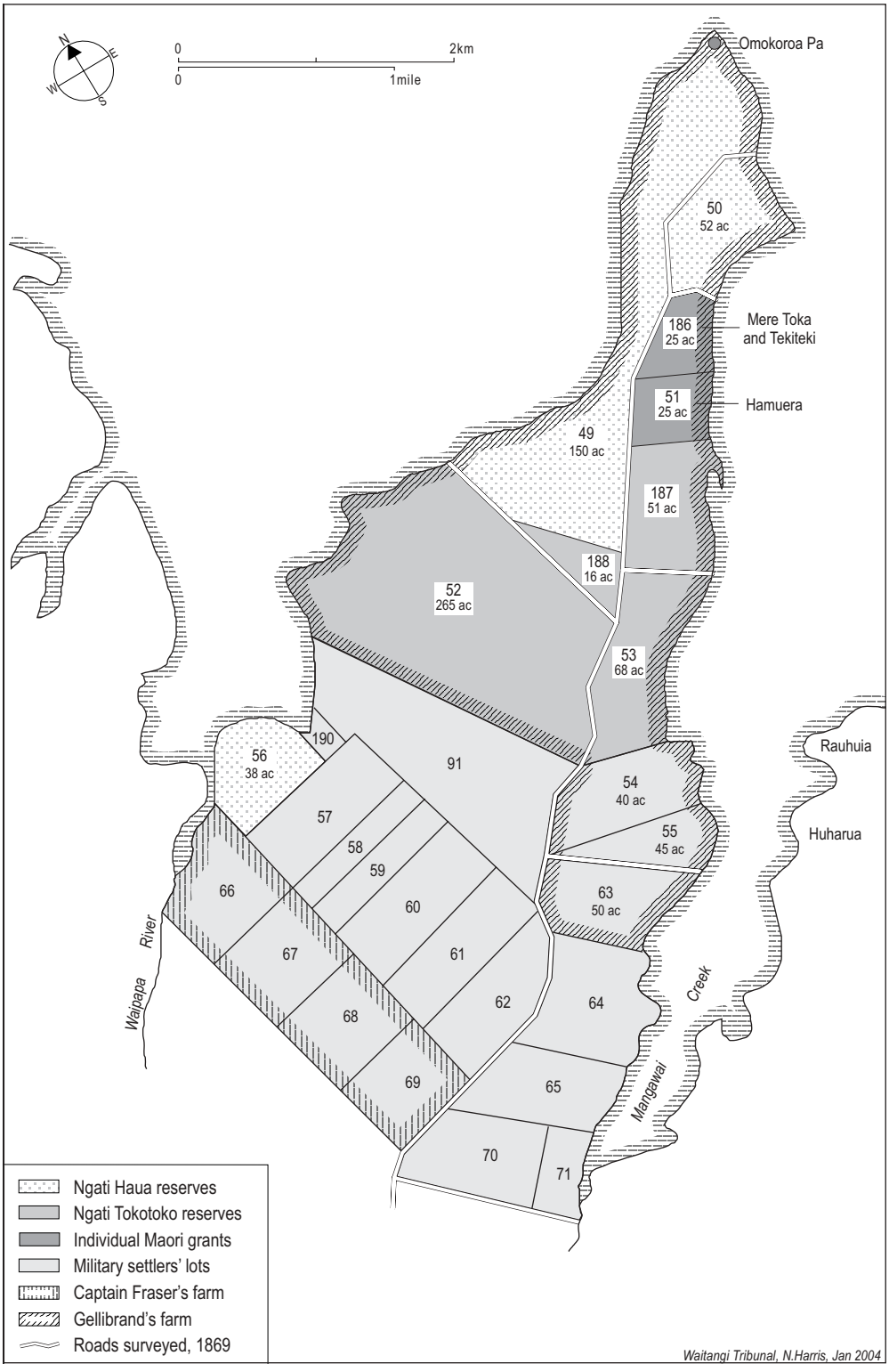
34. Document K3, pp 53–61

35. Ibid, p 64

36. 'Notes of a Meeting between the Hon Mr Ballance and Tauranga Natives, at Whareroa, Tauranga, on the 21st February, 1885', AJHR, 1885, G-1, p 66

37. Another example of an alienation of a hapu allocation was the lease of the Ngai Tuwhiwhia reserves. Parish of Te Mania lots 33, 35, 46, and 47, totalling over 500 acres, were vested in Te Kuka and Te Puru for the use of Ngai Tuwhiwhia. Like Ngai Tuwhiwhia's reserves at Otumoetai, these were soon leased. Te Kuka Te Mea leased the four blocks to Thomas Craig in December 1869. Te Kuka, a 'loyalist' chief, was among the first to alienate awarded land in Te Puna–Katikati because he was in the confiscated block: see doc K3, p 41; 'Land Possessed by Maoris, North Island (Return of)', AJHR, 1886, G-15, p 12.

38. Document K3(a), p 48



Map 23: Omokoroa reserves

the three grantees for £100.[39] In addition to the Ngati Tokotoko award, Ngati Haua were also awarded Te Puna lots 49 and 50 at Omokoroa. These 202 acres were granted in trust to Te Raihi and Hakiriwihi, and restrictions on alienation were put in place. The lots were leased to Gill in March 1871 for 21 years at £20 per annum and were transferred to Gellibrand for a further £300 in December 1876. Gellibrand purchased lots 49 and 50 in April 1877, despite the alienation restriction, paying £350 to Te Raihi and Hakiriwhi.[40] However, Te Puna lot 56, also awarded to Ngati Haua at Omokoroa, was not sold. It remains in trust for Ngati Haua today, minus a public works taking. According to Evelyn Stokes, Te Puna lot 56 is the only known case where the Crown recognised the continuing existence of a trust into the twentieth century on land awarded to Maori in the Tauranga area.[41]

We are able to discuss the purchase of the Omokoroa lands by Gellibrand at some length, because a large amount of information exists about the transactions. Problems surrounding the land awarded at Omokoroa came to a head in 1877 after Clarke reported on the matter in his capacity as under-secretary of the Native Department. His report followed complaints from Pakeha farmers over the actions of some Maori in the area.

The root of the problem, as Clarke saw it, was that some Pirirakau and Ngati Rangiwewehi had been squatting on land at Omokoroa that had been sold. They had interfered with attempts by Gellibrand to fence some of the land in lots 49 and 50 that he had leased from Te Raihi and Hakiriwhi. Clarke consulted the Ngai Te Rangi rangatira Hori Ngatai and Enoka Te Whanake, who suggested that it would be good if Clarke lifted alienation restrictions and allowed the lots at Omokoroa to be sold. They would then be 'rid of the Ngatihaua element from the Tauranga District'.[42] Clarke agreed, and he secured the Governor's consent to remove the restrictions. The two lots were purchased from Te Raihi and Hakiriwihi, although Gellibrand paid some of the money to Ngati Rangiwewehi to extinguish their claims (though, so far as we can see, they would not have had customary rights to the land). Clarke appears to have been mainly interested in securing the interests of the Pakeha farmers. He paid little attention to the fact that Te Raihi and Hakiriwihi's leases and sales of the lots were alienations of land held in trust for Ngati Haua.[43]

This case study illustrates some key aspects of the alienation of land returned to hapu at Tauranga. Where restrictions on alienation were imposed and a trust was written into the Crown grant, it was common in the first instance for Maori to lease the land to Pakeha. Leases for fewer than 21 years were usually permissible under such restrictions. It was common for the Pakeha lessee to try to have the restriction removed, either during the currency of the

39. Document A57, p 272
40. Ibid, p 271
41. Ibid, p 275. Other than the Ngati Haua and Ngati Tokotoko awards, Tice Gellibrand also purchased two individually granted lots and three military settlers' lots at Omokoroa in 1877. The military settlers' lots were unoccupied farm sections from the Tawhitinui military settlement. A single certificate of title was issued to Gellibrand for all his purchased lots in 1880: see doc A57, pp 271–272.
42. Document A57, p 269
43. Ibid, pp 270–271

lease or on the expiry of the term. However, other lots that were ostensibly awarded for the benefit of hapu, such as the Ngati Tokotoko allocations at Omokoroa, had no trust or restrictions on alienation written into the grant. Ngati Tokotoko's awards (Te Puna lots 52 and 53) were sold soon after being awarded. The Crown noted in its submissions to the Tribunal that, for the trust commissioner to issue a certificate of confirmation of an alienation, sellers had to make a statutory declaration that 'The land was not held in trust for the benefit of "any Native community".'[44] Trust Commissioner Haultain approved the sale of the Ngati Haua reserves. We are not aware if he knew of the trust that the lands were subject to. From the evidence presented to us by Mr Hayes and others, it seems that Haultain never declined to issue a certificate of confirmation for a sale of Tauranga land because it was held in trust for hapu.[45]

11.2.4 Town lots, endowment reserves, half-caste grants

As far as is known, none of the individual town allotment grants had restrictions on alienation placed on them, and most were sold soon after being awarded. Very little information about these sales was presented to us. Some known examples of sales include:

- Lot 201, section 1, of the town of Tauranga, one of the Te Arawa military awards, was sold by Maihi Te Rangikaheke to E G B Moss, a Tauranga lawyer, in May 1883.[46]
- The five lots awarded to the wife of Louis Dihars, Irene Pareraukawakawa, were sold soon after being granted.[47]
- The two town allotments awarded to Ngati Pukenga in payment for their Te Puna–Katikati and other interests were sold in the early 1870s to the Catholic Church.[48]

Evelyn Stokes noted that many lots in the confiscated block listed by Heaphy in 1871 as native reserves (often called endowment reserves) were not gazetted and, by 1886, had been granted to individuals.[49] One important reserve that did remain administered as a reserve was the Brookfield reserve. In 1872, it was decided that this relatively large reserve (comprising Te Papa lots 14 and 114, a total of 160 acres) near Otumoetai would be set aside for general educational purposes. In 1877, Heaphy reported that the reserve had recently been leased for 21 years at £25 per annum.[50] Part of the reserve was later vested in the Auckland Education Board as a site for the Otumoetai school. The rest was administered in turn by the Public Trustee, the Native Trustee, and finally the Maori Trustee, who sold the land for residential development in the 1950s.[51]

44. Document O2, p 95
45. Document M11, pp 88–92
46. Document A57, p 165
47. Ibid
48. Document M2, p 64
49. Document A57, p 168
50. Ibid, p 178
51. Ibid, p 181

As we noted in chapter 10, much of the land awarded to the children of Pakeha fathers and Maori mothers remained in the hands of the original grantees or their families, at least until 1886. The one notable exception was the Nicholls family grant at Te Puna. This 100-acre lot was granted in 1876 with restrictions on alienation. In 1877, the Native Department decided that there was no need to retain the restrictions because the Nicholls family members were 'quite able to take care of themselves'. The restrictions were removed, and the lot was sold in 1878.[52]

11.2.5 Claimant and Crown submissions

Claimant submissions rarely touched on specific examples of the alienation of awards in the confiscated and Te Puna–Katikati blocks. The alienation of awarded land was usually discussed in general terms and in relation to the way alienation restrictions were applied in Tauranga. In the joint submission, claimant counsel agreed with Stokes' view that Clarke's policy was 'one of liberal discretion not to impose restrictions' on the awarded land within the confiscated block and Te Puna–Katikati.[53] We address that issue later in the chapter, when we discuss restrictions on alienation throughout the Tauranga district.

Ngai Tamarawaho's closing submission referred to lot 115 in the parish of Te Papa. Counsel noted that such lots were held by individuals in trust for hapu, but this did not protect them against alienation. She submitted that the quick alienation of this block was the result of the individualisation of tenure, which occurred through the process of confiscation and return of Ngai Tamarawaho land.[54] We made findings on the issue of individualisation of tenure in the previous chapter, and the submission concerning Te Papa lot 115 is covered in general terms at that point.

As we have indicated, claimant submissions were usually made in general terms and referred to the whole confiscation district. For this reason, it is appropriate for us to make findings after we have considered the alienation of land in the remainder of the confiscation district. However, the submission of counsel for Ngai Tamawhariua ki Katikati raises issues specific to the alienation of land in Te Puna–Katikati and therefore needs to be addressed here. Counsel submitted that the purchase by Gill of lots 9 to 16 in the parish of Tahawai was fraudulent. Owing to this alleged fraud, it was further submitted that customary title had never been extinguished in these lots and that the Crown was in breach of the Treaty for not adequately protecting Ngai Tamawhariua.

In the case of Tahawai lots 9 to 16, counsel did not provide adequate evidence that fraud had taken place. We reject his contention that Crown witness Robert Hayes admitted under cross-examination that transactions of a fraudulent nature took place. We heard no such

52. Document A57, p 150; doc M11, pp 65–67
53. Document N11, p 190
54. Document N23, pp 40–41

admission when Mr Hayes was cross-examined. It is true that the price paid was very low, and one or two individuals sold some land that was awarded to them for the benefit of their hapu, but this does not amount to evidence of fraud. Lastly, we reject the notion that any 'unextinguished customary title rights' could exist in the Te Puna–Katikati blocks. This land was proclaimed part of the Tauranga confiscation district in 1865, and all customary rights were extinguished at that time. We have already made a finding on this issue (see sec 10.8.4). We do not consider that these allegations have sufficient basis in fact to necessitate an examination of the remedies sought by counsel for Ngati Tamawhariua ki Katikati.[55] However, the general findings at sections 11.6 and 11.8 on the alienation of Maori land apply equally to Ngai Tamawhariua ki Katikati as to other hapu.

Like the claimants, the Crown made few specific references to alienations of reserves. Crown counsel strongly disagreed, however, with Stokes' view that Clarke was overly liberal in not imposing restrictions on alienation within the confiscated block and Te Puna–Katikati.[56]

11.3 Crown Purchases in the Remainder of the Confiscation District

11.3.1 Introduction

Stokes estimated that 136,191 acres were awarded to Tauranga Maori outside of the confiscated and Te Puna–Katikati blocks. By 1886, the cut-off date for consideration in this report, just over 1000 acres of the awarded land were being leased and more than 80,000 acres had been sold or were in the process of being sold. Of these 80,000 acres, approximately 19,000 were purchased by the Crown.[57] Most of the land subsequently transferred to the Crown or private purchasers had been awarded by the commissioners only in the few years before 1886.[58]

The awarding of land to Maori in the remainder of the confiscation district took much longer than the awarding of reserves in the confiscated and Te Puna–Katikati blocks. With the exception of some blocks on the inshore islands, the commissioners did not start returning land in the remainder of the confiscation district until 1877, and most of it was not returned until the mid-1880s. The way that land was returned in the remainder of the district also differed. Few, if any, of the awards were made to reward individual Ngai Te Rangi. Instead,

55. Document N8, pp 23–24

56. Document O2, p 84

57. At the end of his tenure as commissioner of Tauranga lands in 1886, Brabant recorded 4957 acres as purchased by the Crown and 13,936 acres as 'under purchase by Government'. However, the whole Papamoa block was included in Brabant's list as under purchase but not all of it was eventually purchased. Also, Otawa 1, where Government negotiations to purchase began only in December 1886, was not included in the list: see Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, encls 2, 3, pp 4–5.

58. See Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, encls 2–5, pp 4–5; 'Removal of Restrictions on Sale of Native Lands', AJHR, 1886, G-11A, p 1

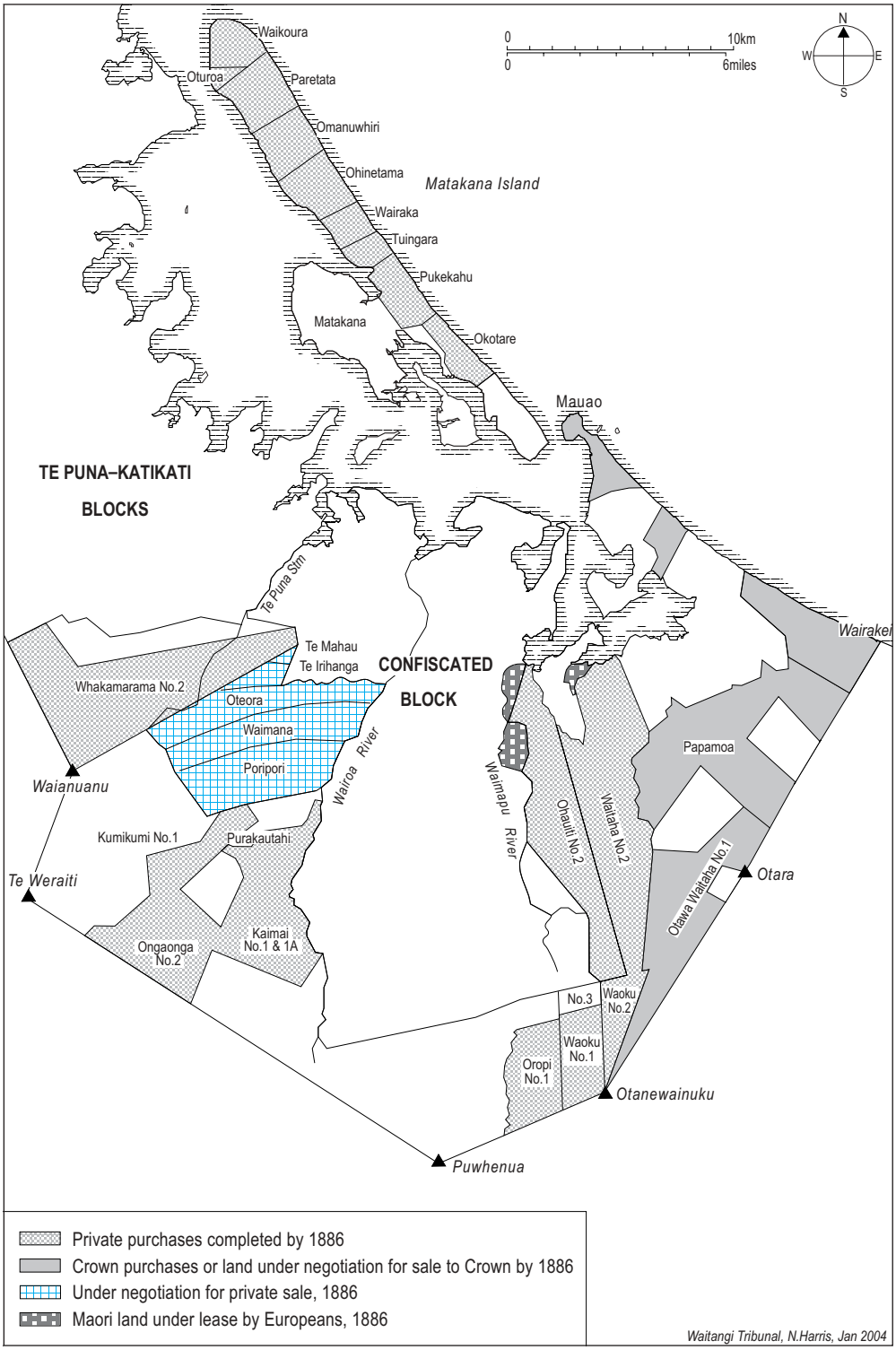
land was usually awarded to relatively large lists of owners, sometimes from several different hapu. The way in which land was alienated in the remainder of the district, therefore, was also different. Partitioning by the Native Land Court, following a request from a private purchaser or the Crown, was used when necessary to enable the purchased interests in a block to be defined and divided off from the interests of non-selling Maori. No reserves were purchased by the Crown in either the confiscated block or Te Puna–Katikati, but Crown purchases became relatively widespread in the remainder of the confiscation district.

At the 1878 Native Affairs Committee hearing into a disputed Tauranga alienation (see secs 1.1.2, 1.4.4), Grey, who was by then Premier, stated that all the awarded land at Tauranga was intended 'for the use of the Natives'.[59] He seemed to be implying that the land awarded would be made inalienable. Clarke disagreed, however, and pointed out that Grey had told Tauranga Maori in 1864 only that 'all the land at Rangiwaea, Motuhou, Ohuke [*sic*], and Maungatapu was to be reserved for them absolutely, and they were not to be allowed to deal with or sell the land to Europeans'.[60]

Clarke's view is clearly much closer to what was recorded on the subject in the aftermath of the pacification hui than Grey's (see sec 5.2). Grey was confused as to the extent and make-up of the Tauranga district in 1864, and at the time he said nothing about the inland blocks in the remainder of the district. In any case, the land under discussion at the pacification hui was much more limited in extent than the district eventually included in the Tauranga District Lands Acts of 1867 and 1868 (see sec 6.3.5). Many of the inland blocks that were eventually returned to Tauranga Maori in the 1880s were included in the Tauranga district only when the confiscation boundary was extended by the 1868 Act. These blocks could not, therefore, have been part of Grey's 1864 promise. It is probably safe to conclude that in 1864 Tauranga Maori were promised only that the land on the inshore islands and around the edge of the eastern harbour would be 'inalienable reserves'.[61]

But, even within this more limited area, the Crown purchased some of the land returned to Tauranga Maori east of the harbour. It also purchased a large proportion of the inland Otawa–Waitaha lands, as well as all or part of four offshore islands. The motivation for these purchases varied. Land at Mauao and on some of the islands was purchased for navigational or recreational reserves, wildlife sanctuaries, or public works. Some inland blocks were targeted because the Crown wanted to secure timber resources.[62] At other places, the Crown purchased land to provide for (invariably Pakeha) farmers under closer settlement schemes. Local Tauranga politicians periodically urged the Government to purchase land in the belief that this would help to 'develop' the district. Lastly, we note that the Crown's purchasing activities were blighted throughout the western Bay of Plenty, including Tauranga, by the alleged

59. Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, p 3
60. Ibid, p 2
61. Document M11, pp 40–58
62. Document K25, p 210



Map 24: Alienation of Maori land – remainder of confiscation district

fraudulent activities of two of its agents, John Young and Abraham Warbrick. We discuss their purchasing methods when we examine the Otawa–Waitaha 1 purchase below.

11.3.2 Mauao

(1) Crown grant and purchase of Mauao

Brabant investigated the Mauao blocks between 1881 and 1883. They had already been investigated by Wilson, who had not made any awards, but since Wilson refused to pass on the records Brabant reheard the cases (as mentioned in chapter 10). His investigations are recorded in his 'minute book'. The seven parent blocks on Mauao, totalling approximately 200 acres, were awarded largely to members of three Ngai Te Rangi hapu: Ngati Kuku, Ngai Tuwhiwhia, and Ngai Tukairangi. From the evidence available, it seems that Brabant compiled lists of owners based on customary rights and the advice of some Ngai Te Rangi rangatira.[63] Although there was some argument among the three hapu awarded shares in Mauao as to how the blocks should be divided between them, as far as we are aware, no record exists of any other Tauranga hapu claiming to have been wrongly left off Brabant's Mauao lists altogether.[64] The lists of owners ranged in number from 16 to 50, apart from those for the small Rangiwhakaoma subdivisions, which were awarded to one or two owners only.[65] No formal alienation restrictions seem to have been written into the Crown grants for most of the blocks on Mauao. Instead, a notice published in an Auckland newspaper in November 1880 stated that, if Crown grants were issued for 'Maunganui Mountain', then that land would 'be rendered inalienable except to the Crown'.[66]

It is therefore obvious that, before the Mauao blocks were granted, the Crown had decided to purchase them. After awarding title to Maori for the Mauao blocks, Brabant acted as the Crown agent, purchasing the blocks from the same Maori. In 1886, at the end of his tenure as commissioner of Tauranga lands, Brabant wrote a report on the state of the land 'returned to Ngaiterangi under Tauranga District Lands Act'. This report included an update on the progress of the Crown purchase of Mauao. Brabant identified 20 blocks that the Crown had purchased or was in the process of purchasing. Not only were these blocks on Mauao itself, but some were also on the Mauao Peninsula, to the south-east of the mountain.[67] Of these 20 blocks, 13 had been acquired. In the remaining seven blocks, only 27 shares out of 203 had yet to be purchased. Chief amongst the non-sellers was the Ngati Kuku leader Hori Ngatai.

63. Document A18, pp 289–345; doc K25, p 214
64. Document A49, pp 75–77, 84–85
65. Ibid, pp 78–79
66. Ibid, p 63
67. The majority of interests in five blocks, totalling approximately 1350 acres, near Mauao but not on the mountain itself – Hopukiore, Te Maire, Horoipia, Wharawhara, and Te Awa o Tukorako – were also purchased at the time the Crown was purchasing the blocks on Mauao proper: see Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, encls 2, 3, pp 4–5; doc A57, p 132.

Several reasons were given by Government officials in the 1870s and 1880s as to why it was necessary for the Crown to purchase Mauao. In 1880, Wilson stated that the former Premier, Harry Atkinson, had decided to purchase 'the whole of "Mount Maunganui"' because it would be needed for marine and defence purposes and possibly also for quarrying.[68] The Tauranga Borough Council also pressed the Crown to gain title to the mountain so that it could be set aside for recreational purposes. The council even encouraged the Government to take the land under public works legislation, if necessary, although this suggestion was never acted on.[69]

Crown agents applied considerable pressure on owners to sell their Mauao shares, but we do not agree with Stokes that these were 'in effect, compulsory purchases'.[70] Some owners who did refuse to sell had their interests partitioned out, and others agreed to exchange shares in Mauao blocks for shares in nearby lands. We now briefly outline the Crown purchases of the Mauao blocks before proceeding to evaluate claimant and Crown submissions on them:

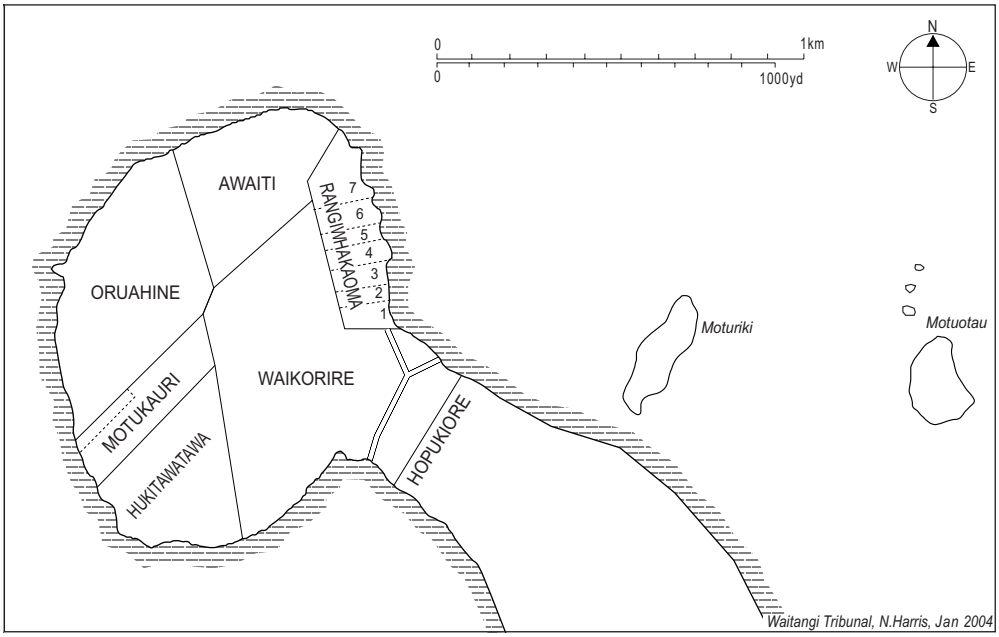
- In 1866, the Government acquired a two-acre two-perch section known as the pilot reserve. Very little is known about this alienation.
- John Chadwick purchased the 16-acre Rangiwhakaoma block next to the pilot reserve for himself in 1869. It appears that local Maori disputed the extent of the land that Chadwick claimed to have purchased. The Crown exchanged the block for a lot in the parish of Te Papa in 1879. Strangely, it was then subdivided into seven blocks by the Native Land Court and title to Rangiwhakaoma 2 to 7 was vested in the 'original owners'. The subdivisions were restricted from alienation, except for Rangiwhakaoma 1, which remained Crown land.[71] The Crown had purchased all of the Rangiwhakaoma subdivions by 1883, with no apparent reference to the alienation restrictions.[72]
- The western block on Mauao, Oruahine (46 acres), was granted to 38 Maori led by Te Puru Te Mea in 1881. In that year, Brabant informed Gill, by then the under-secretary of the Native Land Purchase Department, that 10 of the owners were willing to sell. He asked Gill if he should wait until the owners were unanimous in their desire to sell or begin buying shares starting with the 10 willing sellers. Gill replied that it was not necessary to wait and that he should begin buying shares as soon as they became available. Brabant noted some initial resistance to the sale, but this appears to have due to the price being offered by the Government being considered too low.[73] The opposition eventually

68. Document A49, pp 58–59
69. Ibid, pp 79–80
70. Document A57, p 239
71. Document A49, p 47
72. Ibid, pp 94–99
73. Document A45, pp 71–75

collapsed, and Brabant completed the purchase by October 1884. In all, the Government paid £325 10s for the block.[74]

- Brabant completed a title investigation for the 32-acre Te Awaiti block in 1882. The block was awarded to 36 Ngai Tukairangi, but there was some complaint from members of other hapu with customary interests in Mauao about being left off the list. Immediately a certificate of title had been issued, the owners of Te Awaiti applied to Brabant to sell the block. Brabant decided to wait three months 'after date of certificate' before beginning the Crown purchase. All shares of Te Awaiti were purchased for £213 10s in November 1882.[75]
- The largest block on Mauao was Waikorire (71 acres). Brabant held hearings in September 1881 and awarded title in 49 shares at the same time as he awarded the Te Awaiti block.[76] By October 1886, Brabant had purchased all but two of the 49 shares. The two who would not sell were Mere Taka and Hori Ngatai. However, Taka's share was eventually exchanged for six acres in the parish of Te Puna. In November 1886, Ngatai sent a telegram to the Native Minister asking for seed, because all his crops had been destroyed in a flood. The Minister replied that the Government could not help and suggested that Ngatai sell his interests in Mauao to raise money to buy seed. Ngatai refused to sell his share but agreed to exchange his interests in Waikorire and Hopukiore for shares in the nearby Te Maire block.[77]
- There was some dispute over the list of owners drawn up for the 15-acre Motukauri block. Ngatai and others objected to their names being left off, but in October 1881 Brabant awarded title to 16 mainly Ngati Kuku Maori. Taka was also left off the list, despite being prominent amongst Ngati Kuku at the time. The Government had acquired all but two of the 16 shares by 1888, when it applied to the Native Land Court to have its share partitioned off from the interests of the non-sellers. As a result, Motukauri 1 became Crown land and Motukauri 2 was vested in the two non-sellers. The 14 original sellers were paid £103 5s for their shares.[78]
- In August 1881, Brabant awarded Hukitawatawa (25 acres) to 24 persons, who appear to have been mostly of the Ngai Tuwhiwhia hapu. One of the grantees was unwilling to sell her share, though she was finally convinced to exchange her interest for a share in land nearby. By February 1887, the Crown purchase of Hukitawatawa was complete, at a cost of £172 7s 6d.[79]
- Two islands that lie off the beach near the foot of Mauao – Moturiki and Motuotau – were also purchased by the Crown in the mid-1880s. Having already obtained

74. Document A18, p 398
75. Document A49, pp 76–78
76. Document A18, p 306–307
77. Document A49, pp 85–92
78. The Crown purchased Motukauri 2 in the 1920s: see doc A49, p 94.
79. Document A18, p 398; doc A49, pp 81–84



Map 25: Mauao blocks

permission from the Native Land Purchase Department to buy them for £15 each, Brabant awarded Moturiki and Motuotau to members of Ngati Kuku and Te Whanau a Tauwhao in March 1884.[80] He then accepted an offer to purchase seven shares in Moturiki soon after having awarded the block. By March 1888, the Crown had purchased 25 out of the 28 shares in it.[81] The history of Motuotau is similar. It was investigated in June 1883, and a Crown grant was made in March 1884. By 1888, the Crown had purchased eight of the 10 shares in the island.[82]

In 1888, the bulk of Mauao (195 acres) was gazetted as a reserve for recreation purposes. A small section was later vested in the Tauranga County Council for use as a quarry, while the pilot reserve remained outside of the recreation reserve. In the 1960s, all the land on Mauao, as well as Moturiki and Motuotau, was consolidated into the Mount Maunganui domain. In 1981, part of the domain was classified as a 'reserve for historic purposes', while the rest remained classified as a recreation reserve.[83]

80. Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, p 3; doc A48, pp 23–24

81. We do not have any evidence of how these shares were purchased. The Native Land Court awarded Moturiki to the Crown minus the interests of three non-sellers, which were partitioned off into Moturiki 2. This was eventually taken under public works legislation in the twentieth century: see doc A48, pp 23–25.

82. On the same day, the majority of Moturiki was awarded to the Crown by the Native Land Court, Motuotau was also partitioned and all of the island except for the interests of two non-sellers was awarded to the Crown. One of the non-seller's interests was purchased soon after the Native Land Court hearing in 1888 and the final share was acquired in 1900: see doc A48, pp 38–41.

83. Document A18, p 401

(2) Claimant and Crown submissions

Counsel for Ngai Tukairangi submitted that, in purchasing Mauao, the Crown failed to consider the spiritual or food-gathering significance of the mountain to Ngai Tukairangi. He also stated that, by actively pursuing the purchase of Mauao and other Ngai Tukairangi blocks, the Crown did not ensure that the hapu retained a sufficient endowment of land for its needs. The Crown was therefore in breach of its article 2 Treaty obligation actively to protect Ngai Tukairangi's land, taonga, and traditional food sources.[84]

Crown counsel made reasonably specific submissions on the Crown's purchase of Mauao.[85] Counsel submitted that title to Mauao was properly determined, the Government did not take the land compulsorily, and the blocks were purchased from willing sellers over a relatively long period of time. The Crown submission disputed a criticism made in evidence by Tribunal researcher Roimata Minhinnick. Minhinnick argued that the Crown was at fault for placing alienation restrictions on the Mauao blocks and then ignoring them. Counsel submitted it was 'absurd' to think that the Crown would create a system where it would have to obtain its own consent before purchasing Maori land.

In the joint submission in reply to the Crown, made on behalf of Ngai Tukairangi and others, counsel submitted that, despite the Crown's knowledge of the significance of Mauao to Tauranga Maori and the need to restrict the alienation of awarded land, the Crown pursued a determined strategy to purchase the mountain.[86] Counsel asserted that some Tauranga Maori with legitimate rights to the blocks were left off the lists of owners prepared by Brabant and that a 'conflict of interest' was created by Brabant's role in awarding and then purchasing the blocks. A further criticism was that the Government forbade anyone except itself from buying the Mauao land, thus creating a monopoly.

(3) Treaty findings

As we have made clear in chapter 2, Mauao was of immense significance to all the hapu of Tauranga for several reasons. These included the presence of urupa on the mountain, it being a tapu battle site, and its status as an ancestral taonga with which all Tauranga Maori identify. The confiscation of the mountain, which was clearly not required for settlement purposes, and the individualisation of its tenure are Treaty breaches that are particularly poignant for Tauranga Maori. These issues have been dealt with, in general terms, in preceding chapters. Here, we discuss the claimants' allegations of subsequent Treaty breaches arising from the Crown's acquisition of Mauao in the 1880s.

The claimants asserted that, in purchasing Mauao, the Crown ignored the significance of the mountain to Tauranga Maori. We do not agree that the Crown's decision to acquire Mauao, in itself, necessarily shows such a disregard. The blocks could have been administered

84. Document N10, pp 30–34; doc N19, pp 16–17
85. Document O2, pp 114–118
86. Document P8, pp 53–56

as native reserves, just as urupa sites sometimes were. In that case, Mauao would have become Crown land under a mechanism that, while not ideal, might still have protected aspects of the relationship that Tauranga Maori had with it. It is clear, however, from the reasons given by the Crown in the 1880s for its purchasing, from the means by which the Mauao blocks were purchased, and from the creation of the Mount Maunganui recreation reserve in 1888 that this relationship was never a factor in the Crown's acquisition of Mauao. Pakeha recreation, quarrying, defence concerns, and navigation were among the reasons why the Crown deemed it necessary to purchase Mauao; Maori associations with the mountain were not. The Crown thus failed to protect the rangatiratanga of local Maori over their taonga when it acquired Mauao. This is a significant breach of the Treaty.

There is also a prior issue to be addressed. Even if the management of Mauao as a reserve had gone part-way towards protecting the taonga and the relationship of Tauranga Maori with it – an opportunity that was missed – the Crown still had to purchase the blocks in a manner consistent with its Treaty obligations. The Crown's conduct in awarding and then purchasing Mauao is a key issue that needs to be evaluated in light of Treaty principles

We begin our discussion of this issue by looking at how the traditional relationship of Maori with their confiscated mountain was translated into ownership of returned blocks, and in particular whether all customary interests were recognised. We have no conclusive evidence that any Tauranga hapu were wrongfully excluded from the Crown grants issued for Mauao. Undoubtedly, Mauao was of spiritual significance to all Tauranga Maori, but it does not follow that all Tauranga hapu should have been included in its Crown grants. It appears that Ngati Ranginui hapu and other Ngai Te Rangi hapu did not dispute the right of members of Ngati Kuku, Ngai Tuwhiwhia, and Ngai Tukairangi to have their names on the awards for the blocks.

What concerns us is the fact that the individualisation of tenure excluded all except those on the lists from any rights to, or any say in, the management of Mauao. Customary tenure allowed other hapu besides the principal hapu that occupied the immediate area a stake in the use of the blocks. The issue arising from the Crown's awarding and purchasing of Mauao, therefore, is greater than simply whose names were or were not included on the lists of owners. The relationship of Tauranga hapu to the mountain was fundamentally altered once individual shares of tradeable title to Mauao were awarded. And once land was alienated to the Crown or private purchasers, Maori access to wahi tapu on the mountain, for instance, could be severely restricted. In Treaty terms, the Crown should have come up with a form of tenure that recognised all customary rights.

The three hapu whose members were awarded the Mauao blocks were those with the principal interests in the mountain at the time. Dividing the mountain into blocks, however, resulted in the exclusion of some hapu members from blocks in which they appear to have had a customary interest. This was certainly the case for Hori Ngatai, the principal rangatira of the area. We cannot rule out Brabant's apparent conflict of interest as a reason for these

exclusions. Brabant's many offices have been discussed in the previous chapter, where we expressed our concern that, at any particular time, Tauranga Maori must have been uncertain of the capacity in which he was acting for the Crown. In the case of Mauao, Brabant awarded ownership of the blocks as the commissioner of Tauranga lands, but he also purchased most of the shares in those blocks. The fact that known non-sellers such as Ngatai and Taka were left off the lists of owners of some blocks, despite good customary claims, made the subsequent purchase of the blocks by Brabant on behalf of the Crown much easier. This is very serious, given the need for the Crown to ensure that its officials behaved scrupulously at all times and avoided even the appearance of impropriety.

Having awarded interests in the returned land on an unsatisfactory basis, the Crown moved to purchase those interests and imposed a monopoly to assist it in achieving that goal. The Crown's decision to prohibit the alienation of the blocks to private purchasers reinstated Crown pre-emption with respect to Mauao. It is not clear whether the Crown's monopoly over Mauao had the effect of depressing the price. At the time, the mountain would have had little economic value, except perhaps for grazing (a use that continues to this day), so it is unlikely that Maori would have got more for it from a competitive sale. Those who sold their shares in Mauao received prices that, when compared to other sales in the area, appear relatively high. This is probably a result of the Crown's determination to gain title to the mountain and the Maori owners' insistence on relatively high prices for land that was of special significance to them. This does not mean, however, that the Crown was justified in imposing its monopoly over purchases, since the operation of an open market may well have resulted in higher prices for Maori vendors or in leasing rather than absolute alienation. In 1882, Brabant lamented that 'a system has never been initiated by which natives could sell their surplus lands by auction and thus obtain the best price'.[87]

We make no finding, at this point, on the question of whether the Crown ensured that hapu with interests in Mauao retained a sufficient endowment of land for their future needs. Ngati Kuku, Ngai Tuwhiwhia, and Ngai Tukairangi had interests in other land in Tauranga Moana as well as Mauao. We address the Crown's alleged Treaty breach in not ensuring Maori maintained sufficient land for their future needs in the context of the confiscation district as a whole at section 11.8. Owing to a lack of evidence, we cannot state definitively how the alienation of Mauao affected the ability of Tauranga Maori to access kaimoana and other food sources in the area.[88] We can, however, address a particular issue that has been raised about the retention of a sufficient land base. One way of actively protecting such a land base

87. Quoted in doc M11, p 67

88. Hori Ngatai complained to Native Minister Ballance in 1885 that he was losing his customary rights over several inshore shellfish beds as the result of 'all the land below high-water mark' being said to belong to the Queen. We do not have the evidence before us to conclude that the areas Ngatai referred to were affected by the alienation of Mauao: see 'Notes of a Meeting between the Hon Mr Ballance and Tauranga Natives, at Whareroa, Tauranga, on the 21st February, 1885', AJHR, 1885, G-1, p 61.

was to place official restrictions on its alienation. These restrictions were intended to restrain private parties; in the case of Mauao, we do not consider that the Crown was in breach of the Treaty by not making itself subject to alienation restrictions. The Crown had better means of providing active protection than making itself subject to such restrictions. With the exception of the small Rangiwhakaoma block, no formal alienation restrictions appear to have been placed on the Mauao blocks anyway. In the case of Mauao, a decision by the Crown not to purchase the land and to reserve it permanently for Maori would have been a surer method of ensuring that it fulfilled its Treaty obligations.

When the Crown in effect reinstated pre-emption for Mauao, it reinforced its Treaty-based responsibility to purchase only such land there as the Maori owners were willing to sell. The Crown could not employ coercion or pressure. The refusal to help Ngatai with seed at a time of shortage and advising him, instead, to sell his interest in Mauao, amounts, in our view, to pressure, if not outright coercion. In addition, the Crown pursued a determined strategy to purchase shares from individuals without the unanimous consent of either the hapu that had customary rights at Mauao or even the narrower body of owners who had received Crown titles. Minority interests in blocks were usually purchased as they became available, and this was done without the consent of Ngatai, the leading rangatira of the area. He was a well-known non-seller, and was left off the list of Ngati Kuku owners drawn up for the Motukauri block, despite being the principal rangatira of that hapu and indeed in the whole of the eastern harbour area. The Crown clearly undermined his authority in the awarding and purchasing of Mauao.

By purchasing Mauao in the manner described, the Crown breached its article 2 Treaty obligation actively to protect the rangatiratanga of Tauranga Maori by failing to respect the right of hapu to deal with their land in a collective manner. This in turn has had an adverse effect on the relationship of local Maori with their wahi tapu.

11.3.3 Otawa–Waitaha 1

Otawa–Waitaha 1 was a strip of forest land comprising nearly 5000 acres on the eastern extremity of the confiscation district, lying largely in the rohe of Waitaha. Negotiations to purchase shares in Otawa–Waitaha 1 began immediately after the title investigation by Clarke in February 1878.[89] The process of acquiring the block was well advanced by late 1879, with 69 of the 79 owners having sold their interests. The purchasing of these shares was conducted by the Government land purchase agent, John Young, who was assisted by his clerk, Abraham Warbrick. Gill instructed Young to purchase the block for £1000. This was later increased to £1250 in the hope of persuading non-sellers to part with their shares, and the purchase was completed in 1883.

89. Document K25, pp 209–217

The methods by which Young 'purchased' shares in Otawa–Waitaha 1 and other blocks in the western Bay of Plenty have been well documented, thanks to the report on them in 1880 by the Government's assistant auditor, CT Batkin.[90] That year, Gill had noticed some irregularities in Young's accounts, and the Native Minister ordered an investigation of his activities. Batkin reported that Young arranged for Maori to run up debts with local storekeepers. Those Maori then signed away their interests in blocks to extinguish their debts. However, the charges against blocks of Maori land were often made, in the words of Batkin, 'without the sanction, or even the knowledge, of the persons concerned'. The irregularities in Young's purchasing methods included the following:

- Charges being made against blocks in which the debtors had no interest or had already sold their interest.
- Signatures being collected on blank receipts and block names later inserted without the owners' permission.
- Some alleged payments not being made. Batkin stated that it was a 'matter of grave uncertainty' as to whether many payments had reached Maori or were diverted to Young's personal account.
- Maori landowners' signatures being forged.[91]

Young was dismissed from his post. However, those cheated out of their interests did not have them returned. Although the purchase of Otawa–Waitaha 1 was not complete when Young was fired, the Native Land Purchase Department continued to use his accounts of payments made on the block as the basis for closing the purchase. This despite the auditor's finding that many of these accounts were invalid. Gill supervised the purchase of Otawa–Waitaha 1 after Young's dismissal, directing Brabant and Mair to buy the shares of the non-sellers. In February 1881, Mair applied pressure on some Waitaha who had not sold by telling them that virtually all the other shareholders had already sold.[92]

By 1883, there were still six owners who refused to sell their shares in Otawa–Waitaha to the Crown. Gill decided to apply to have the Crown's purchased interest partioned off from that of the non-sellers. In April, the Crown brought the case to the Native Land Court at Maketu. The court partitioned a share of 386 acres for the non-sellers and gave it the name Waitaha 1B.[93] The Crown was awarded the remaining 4561 acres of the Otawa–Waitaha 1 block. At that point, even though the Native Land Court had defined the Crown's interest and partitioned it off from the rest of the block, Maori title to Otawa–Waitaha had not yet been ascertained.

The Government had to wait until the title to Otawa–Waitaha 1 had been issued before the acquisition could be completed. We discussed the awarding of this block at section 10.6.5.

90. 'Transactions of Messrs Young and Warbrick', 31 May 1880, AJHR, 1880, G-5, pp 1–42
91. Document A13, pp 76–79
92. Document K25, p 213
93. Part of this block was sold in the twentieth century and some of the remainder taken under public works legislation, but the majority remains in Maori hands today: see doc K25, p 238.

Brabant reheard the case for the third time in July 1883, at which time the Maori owners were finally determined. The 'certificate' was antedated to August 1878, possibly to avoid a blanket imposition of restrictions on alienation that was published in November 1878 (see sec 11.4.4).[94] The habit of the commissioners of Tauranga lands of awarding blocks after they had been purchased will be discussed when we make our findings on the alienation process below.

11.3.4 Papamoa, Otawa 1

Pressure to buy land suitable for closer settlement east of the Tauranga harbour was applied to the Government by the Tauranga Borough Council from the mid-1880s. In February 1885, the mayor of Tauranga, Thomas Wrigley, wrote to Gill stating that Native Minister Ballance had promised to purchase Papamoa and Otawa 1. According to the mayor, the land was very fertile and well-suited to establishing small farms but was largely unoccupied by Maori at the time.[95] Papamoa was a large block situated at the north-eastern corner of the confiscation district. It had been awarded in 1880, mostly to members of Nga Potiki. Since the Crown purchased the vast majority of shares in Papamoa between 1886 and 1894, we do not follow the purchase any further in this report.[96] However, we are aware that there were significant allegations of fraud in relation to the Crown's purchase of the block. These issues will be dealt with, if necessary, in stage 2 of our inquiry.

Likewise, the purchase of Otawa 1 was discussed but not initiated before 1886. In March 1885, Gill had requested information from Brabant about the status of the Otawa blocks, and Brabant had replied that he had investigated the ownership of Otawa 1 and had decided to award the block to 143 members of Ngati He. He believed that the land was 'alienable', although no 'certificate' had been issued. In December 1886, Brabant reported that he had received offers to sell shares in Otawa from some Maori who were 'merely selling through want of food'.[97] He was authorised to purchase shares in Otawa 1 and began doing so in January 1887.[98]

94. In August 1883, the Native Land Court cancelled the block's Crown grant. In February 1884, Otawa–Waitaha 1 was declared 'waste land' under the Immigration and Public Works Act 1870, and it was designated a State forest in June 1889: see doc K25, p 214.

95. Document L2, p 72

96. See doc E1, pp 12–19; doc A57, p 132

97. Document L2, pp 72–74

98. Following the decision to start purchasing Otawa 1, the Native Department immediately received protests from non-selling owners of the block who felt that the Crown should not purchase shares in the block because those willing to sell held lesser rights in the block than the non-sellers. However, the Crown continued purchasing shares when the opportunity arose in the late 1880s and into the 1890s: see doc L2, p 76.

11.3.5 Offshore islands

(1) Tuhua

Tuhua (or Mayor Island) is the largest of the offshore islands near Tauranga, covering more than 3000 acres. Brabant awarded the island to members of Te Whanau a Tauwhao in 1884. The Government was largely unsuccessful in its subsequent attempts to purchase Tuhua: between 1887 and 1895, it managed to acquire only 16 of 195 shares. Resident magistrate Robert Bush stated in 1891 that, of all the Tauranga islands the Crown was attempting to buy, 'Tuhua Island is the most difficult to deal with. The older people object to its sale, and speak of refunding all the money paid upon it.'[99] Counsel representing Te Whanau a Tauwhao me Te Ngare submitted that the Crown purchase of some shares in Tuhua, against the wishes of the majority of the owners, was the result of tenure individualisation. This was alleged to be in breach of the Crown's duty actively to protect the interests of Maori and their land.[100] These allegations have been dealt with in general terms in the preceding chapter.

(2) Karewa

Karewa is an island of nearly nine acres, north-west of the main entrance to Tauranga Harbour. Because it has no fresh water, the island was not occupied by Maori in the nineteenth century, but it was widely used for fishing and collecting titi. Brabant investigated Karewa in 1884 and awarded three shares to the hapu Te Ngare; two to Ngati Kuku; two to Ngai Tukairangi and Ngai Te Ahi together; and one to a hapu known as Ngatika Awa Awa. These hapu then made lists of owners, and the block was awarded to individuals in 160 shares. Gill gave Brabant approval to purchase the island for £25 in 1883. As was the case at Mauao, Hori Ngatai led those who refused to sell. In 1891, when the Crown had purchased 72 of the 160 shares in Karewa, Bush stated that the Ngati Kuku leader would 'never sign'.[101]

11.4 Private Purchasing in the Remainder of the Confiscation District

11.4.1 Introduction

Some three-quarters of the land purchased in the remainder of the confiscation district by 1886 was acquired by private purchasers rather than the Crown. That year, Brabant reported

99. In 1888, Tuhua Maori protested against Crown attempts to purchase shares in the island and claimed that the sales that did take place were fraudulent. Those 16 shares remained in the hands of the Crown throughout the twentieth century. The remaining shares have been administered by the Mayor Island Trust Board since 1949: see doc A18, pp 406–409; doc A7, pp 28–41.

100. Document N6, p 22

101. For the two decades after 1891, little seems to have been done by the Crown to purchase the remaining shares. In 1913, the Crown began to make moves to obtain the island as a sanctuary for tuatara and sea birds. The Native Land Court subdivided the island and the Crown's interests were partitioned off from the non-sellers'. Following this, the remainder of the island was taken under public works legislation and the Government forbade the taking of 'game' from the island. The owners were compensated £10 15s 8d in 1917. Today, Karewa is in Crown ownership and is an important reserve for tuatara: see doc A18, pp 403–405.

that 49,243 acres of the land awarded in the district had been sold to private purchasers and 1224 acres were under lease.[102] A further 11,173 acres had been purchased, although title had yet to be issued in favour of the purchasers.[103] A few of the purchases in the district were made for farming purposes, notably those by a Captain Morris and his brother-in-law, Jonathan Brown, in the Waimapu Valley and those by George Douglas on Motiti Island. However, most of the land was purchased by speculators, who were gambling on a range of things: the possibility of a large-scale gold find in the area; the value of timber growing on the blocks; the presence of kauri gum on some blocks; and the possibility of reselling farmable land to settlers at a profit. Purchases had nearly always been under negotiation for the land before it was awarded and granted to Tauranga Maori. The issue of title to the Maori sellers through Crown grants enabled Pakeha purchasers to complete their transactions and gain legal title.

11.4.2 Matakana Island

(1) Matakana transactions

As discussed above, Grey promised in 1864 that Matakana Island would be returned to Tauranga Maori and made inalienable.[104] However, before any title investigation of Matakana took place, some of the western portion of the island was purchased by Whitaker and Russell and the eastern portion was bought by William Daldy, an Auckland provincial politician and businessman.[105] We agree with the opinion of claimant researcher Richard Boast that the purchases made by Whitaker and Russell, like many others in Tauranga, were acquisitions 'of ungranted Crown land by means of private contract', and therefore legally void.[106] The speculators' approach appears to have been to buy land before it was granted and then seek to obtain backdated certificates of title under the Land Transfer Act 1870. However, in the case of Whitaker and Russell's Matakana purchases, the Crown intervened and reacquired the blocks before any certificates of title were issued.

Whitaker and Russell bought land on Matakana in 1868 and 1869. It appears that they executed 20 transactions on the island. Altogether, 16 Ngati Te Rangi participated in the sales. These included the surrendered 'rebel' Te Moananui Maraki and the 'loyalists' Hohepa Hikutaia and Haimora Tu – chiefs who sold reserves in the confiscated and Te Puna–Katikati blocks at a similar time. No more than three Maori signed each deed. In total, Whitaker and Russell purchased an estimated 7919 acres for £389. One of the problematic features of these agreements is that virtually no boundaries were included on the deeds and no plans of the blocks were attached. Knowing exactly what was transacted is further hindered by the fact

102. Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, encls 4, 5, p 5. These figures do not include Motiti Island, which was returned not under the Tauranga District Lands Act but by the Native Land Court.

103. 'Removal of Restrictions on Sale of Native Lands', AJHR, 1886, G-11A, p 1

104. Document A8, pp 10–12

105. Document J1, pp 18–19

106. Ibid, p 23

that, at the time these agreements were made, the lands had not been investigated by the commissioner. The only clue given to the location of many of the blocks is the names of the blocks themselves, but few of these names coincide with those that were given to the Matakana blocks when they were finally investigated by Brabant. So far as we can see, the majority of the blocks that were the subject of the Whitaker–Russell agreements lay on the fertile hump of the inshore side of the island, though some of the sandy eastern portion of Matakana may also have been included in these transactions.[107]

Whitaker and Russell's interests on Matakana were purchased by the Government on 2 April 1874. According to the deed, this was because Native Minister McLean wanted to reserve the land for 'public purposes'. The land was subsequently revested with Matakana Maori in 1886, although, curiously, the Crown purchase was recorded as a native land purchase and paid for out of the Native Department's land purchase account.[108] Evidence relating to the Crown's acquisition of the land is limited,[109] but it appears that the Crown was mindful of Grey's 1864 promise to make Matakana inalienable when it returned this land to the ownership of Tauranga Maori.

Daldy purchased eight blocks on the east of Matakana, as recorded in deeds dated between 20 and 28 December 1869 and in a further deed dated 18 September 1873. These blocks were awarded to Maori by Clarke, and the conveyancing of them to Daldy was handled by Whitaker and Russell's legal firm. The names of the owners of the Matakana blocks appear on plans dated 1869 and 1870. It seems, therefore, that Clarke made his Matakana investigations around the time that Daldy was purchasing there. Clarke recommended that no alienation restrictions be placed on the Crown grants to Maori, which were not issued until 1877. Daldy's purchases are outlined in appendix IV.

With the transactions, Daldy purchased the whole of the eastern portion of Matakana except for Tuingara, Opou, Purakau, and Panepane. A certificate of title dated 3 August 1878 was issued for all of Daldy's purchased blocks. The certificate stated that the blocks were Crown-granted to Maori on 7 August 1877, except for Ohinetama, which was granted on 6 October 1877. The total area acquired by Daldy was 8079 acres. In 1884, Daldy complained to Brabant that Maori were taking gum from the blocks he had purchased without paying compensation. Brabant discovered that some of these Maori claimed that the transactions for two of the blocks had never been finalised. This group said that some 'trustees' of the hapu concerned had never signed the deeds and that some payments were still owed to them by Daldy. It is not known how these disputes were resolved.[110]

One further transaction for Matakana land was made before 1886. This related to the 337-acre Tuingara block, Crown-granted in 1877 to Raimona, Te Muri, Te Whawhai, and Hohepa

107. Document A8, pp 14–17
108. Document J1, pp 19–20
109. Document A8, p 17
110. Ibid, pp 18–27

Hikutaia. The grant was antevested to 1869. In a deed dated 24 December 1880, the block was transferred to James Horne for £59 by three of the grantees and Te Muri's wife. Te Muri had died in August 1877. It appears that this sale was not confirmed by the trust commissioner until 1897, when Commissioner Roberts confirmed that the transaction was 'in accordance with the law in force' at the time the deeds were made. However, the deed was not signed by Te Muri's successors, who in 1880 had not yet been appointed.[111]

(2) Claimant and Crown submissions

Counsel for the Matakana hapu submitted that the Whitaker–Russell, Daldy, and Horne transactions were 'legally void' because the purchases were arranged before any investigation by the commissioners. Counsel stated that there was no evidence that the limited number of Maori who executed the Matakana transactions acted with a mandate from the island's hapu. In addition, counsel argued that the Matakana blocks that were sold had no defined boundaries. Counsel submitted that, because the Crown failed adequately to investigate the Matakana allocations and transactions, it did not actively protect the interests of Matakana Maori and was therefore in breach of the Treaty.[112]

Crown counsel replied by arguing that no evidence of Maori dissent from the Daldy purchases exists. The only problem, in the Crown's view, was one of 'perfecting title', which was finally accomplished in 1878 when certificates of title for the Daldy transactions were issued. Regarding the Whitaker–Russell purchases, counsel argued that the Crown refused to approve these transactions, purchased the land from Whitaker and Russell, and returned it to Matakana Maori. On top of that, Matakana Maori were able to keep the original sale moneys. Counsel submitted that the Crown had actively protected Matakana Maori in this instance.[113]

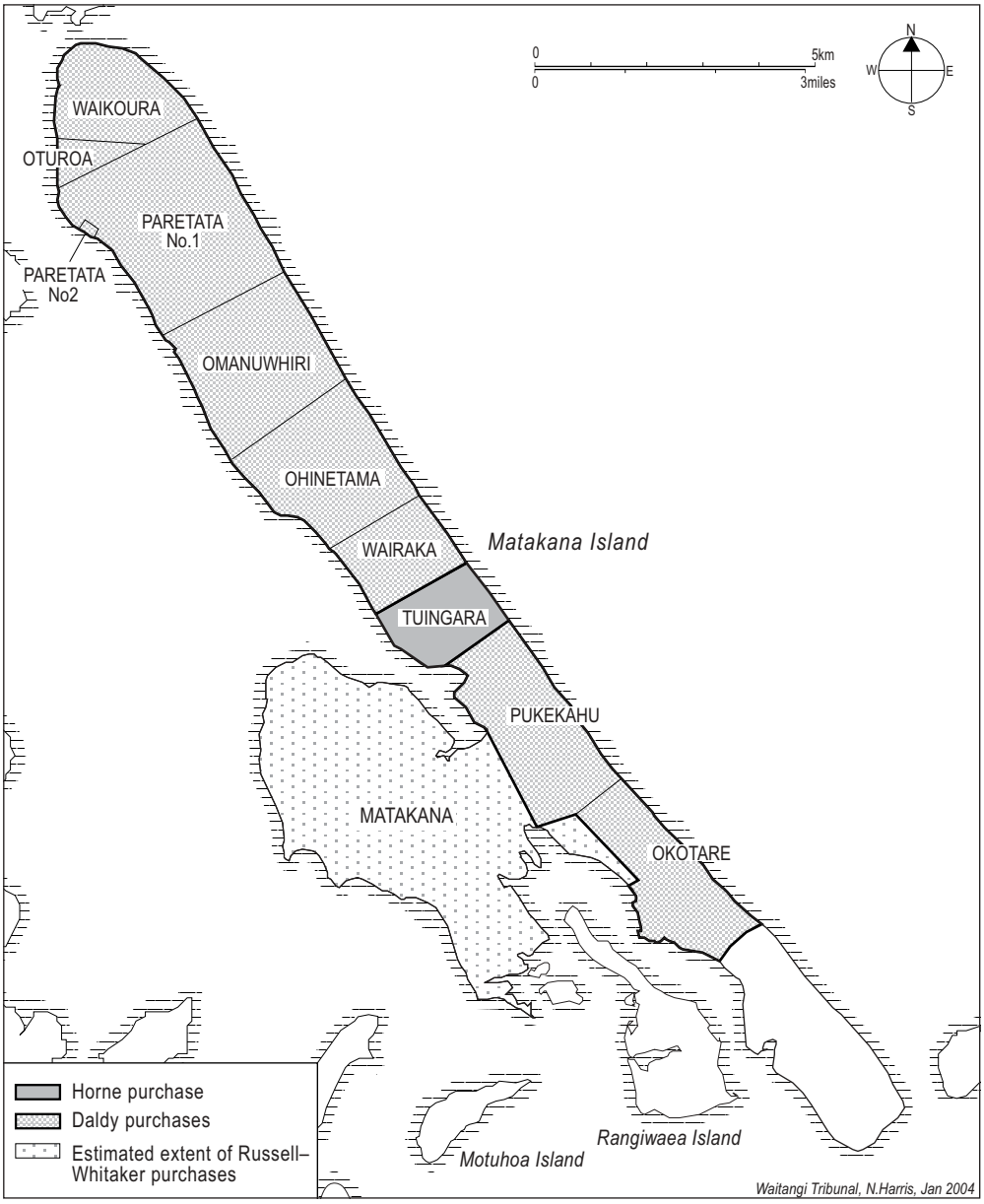
(3) Treaty findings

We make no finding on the propriety of the Crown's transaction with Whitaker and Russell, since that is beyond our jurisdiction, although we accept the Crown's argument that the resulting return of land to Matakana Maori was an instance whereby the Crown did actively protect their interests. However, we qualify that by noting that the Matakana land reacquired from Whitaker and Russell was land on which several hapu had relocated after having moved from land close to the military settlements (with some encouragement from military and Crown officials).

Grey had promised Tauranga Maori that Matakana would be included as part of the 'inalienable reserves' around the edge of the harbour. The Crown's reacquisition of the Whitaker–Russell purchases could be seen as an attempt to uphold this promise. However, the Government allowed much of the remainder of the island to be alienated. Daldy

111. Ibid, pp 33–34
112. Document N19, pp 14–15
113. Document O2, pp 122–125

11.4.2(3)



Map 26: Matakana transactions

purchased the eastern blocks around the same time that Clarke was awarding title, and the Crown grants were not issued until after the purchases had been completed. It seems likely that Clarke did not investigate and allocate these blocks in terms of customary ownership and merely provided titles to those who had treated with Daldy to sell the land.

The Crown's contention that there is no evidence of protest over the Matakana sales is wrong, in our view. As we noted above, some Matakana Maori did protest Daldy's purchases, and there is other evidence of discontent. Just before his death, Te Moananui Maraki sold two blocks of Matakana land. These blocks were often referred to in later petitions to Parliament

protesting the awarding and subsequent sale of Tauranga land. The petitioners stated that Te Moananui had sold land 'secretly' without the knowledge of others with a customary interest in the blocks.[114] Te Moananui is the sole name on the deeds for these two Matakana transactions, and this fact alone lends credence to the claims of other rightful owners that he sold the land in a clandestine manner.[115]

The Crown allowed alienations of land that it had promised would be inalienable and in which customary interests had not yet been investigated. The individuals or small groups of Ngai Te Rangi whose names were eventually put on the Crown grants were exactly the same as those who had already agreed to sell the blocks to Daldy. Other Maori with customary rights to the island lost their interests in the land with no recompense. We therefore find that the Crown failed actively to protect the interests of the customary owners of the parts of Matakana that were purchased by Daldy.

11.4.3 Motiti

In 1867, the Native Land Court awarded the island of Motiti in two blocks (see section 10.6.5 for the reasons why the court and not the commissioners of Tauranga lands awarded the island). The smaller northern block was awarded to a number of individuals of Patuwai, a hapu of Ngati Awa. The larger, southern block was awarded to the Te Whanau a Tauwhao rangatira Hori Tupaea. Judge Henry Monro made this award to Tupaea alone, but according to Chief Judge Fenton, it was awarded to him as a trustee for Te Whanau a Tauwhao. Fenton stated later that the block was awarded to Tupaea only because of the '10-owner rule' in force at the time, which prevented the names of all those with customary interests in the island being included in the award.[116]

The southern part of Motiti awarded to Hori Tupaea was leased to George Douglas for £70 a year. Douglas initiated attempts to buy the land in the 1870s, and by 1882 he had advanced £553 to Tupaea and others. However, he could not gain title to the land, because the Native Department stated that it was held in trust for Tupaea's hapu. The Native Minister told Douglas in 1878 that 'freehold could not be disposed of' on blocks held in trust for a hapu under the legalisation then in force.[117] In 1884, after Tupaea's death, the block came before the Native Land Court for a succession hearing. The Tuhua section of Te Whanau a Tauwhao, who were opposed to selling the land, were denied any rights in Motiti; the block was subdivided into two blocks of 200 acres (Motiti A) and 890 acres (Motiti B). Motiti A had

114. For a summary of many of the petitions of Tauranga Maori to the Native Affairs Committee, see doc A22, pp 203–217.

115. Henry H Turton, comp, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printers, 1877–83), vol 1, p 647

116. Document J1, pp 35–38

117. 'Reports of Native Affairs Committee', AJHR, 1882, I-2, p 19

alienation restrictions placed on it but Motiti B did not.[118] Though no evidence on the matter was presented to us, it appears that Douglas gained title to Motiti B soon after the 1884 hearing as a result of this decision. Presumably, Motiti B was awarded to those who had accepted advances from Douglas.

11.4.4 Waimapu Valley alienations

Counsel for Ngati He, Ngai Te Ahi, and Waitaha pointed to the way in which the alienation of land in the Waimapu Valley took place as an example of the Crown's alleged breaches of the Treaty.[119] By contrast, the Crown pointed to these alienations as evidence that the Government had been reasonably thorough in its supervision of the alienation process at Tauranga. We make general findings on that issue at the end of this chapter; here, we examine the alienation of two large blocks – Ohauiti 2 and Waitaha 2 – in some depth, since a reasonably large amount of documentary evidence concerning them exists. Large portions of two bushclad blocks at the head of the Waimapu Valley – Oropi and Waoku – were also sold in the early 1880s. These were purchased by a speculative partnership with the assistance of Whitaker and Russell's legal firm. In addition, all the leases of Maori land in the remainder of the confiscation district that Brabant recorded in 1886 were in the Waimapu Valley.[120] All known alienations before 1886 in the Waimapu Valley are listed in appendix IV.

(1) Ohauiti 2

Ohauiti 2 stretched from the harbour southwards to the edge of the bush blocks occupied by Te Arawa hapu. It adjoined the confiscated block west of the Waimapu River. The 6547-acre block contained land regarded as suitable for pastoral farming in the 1870s. Ohauiti 2 was awarded by Clarke to 35 Ngati He and Ngai Te Ahi in a 'certificate' dated August 1877 and antevested to August 1871.[121] Clarke tended to award blocks, even large ones such as Ohauiti, to relatively small numbers of people. In the case of Ohauiti 2, despite the award to 35 individuals, some Tauranga Maori who felt that they had been wrongly left out complained.[122]

The awarding of title and the decision not to place a restriction on alienation appear to have been connected with negotiations to sell the land to Morris. Indeed, transactions in the block went back to its lease to Jonathan Brown by 16 Maori from October 1871, 15 of whom

118. Document J1, pp 53–59

119. Document N7, pp 32–37; doc N17, pp 22–25; doc N22, pp 14–19

120. Poike, Ohauiti 1, Tapuaeotu, and Tutukiranga were recorded as under lease: see Herbert Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Land Acts', 4 May 1886, AJHR, 1886, G-10, encl 5, p 5. Tutukeranga, along with the adjoining Kawanui (30 acres), had previously been sold but title had yet to be issued in favour of the purchasers: see doc L2, pp 35–41.

121. A copy of the Crown grant is in Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, p 28.

122. For example, Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, pp 9, 13, 27A

were later to sell to Morris. The lease came before the trust commissioner and was confirmed in 1872. Brown later transferred the lease to Morris, who in turn transferred it to Richard Sherratt. The lease on Ohauiti 2 was finally transferred back to Morris. All these transfers happened sometime before 1878, although the exact dates are unknown.[123] In 1878, in reply to a question from Grey, Clarke stated that 'Like many leases in Tauranga, it [Morris's lease] was not according to law' because it was a lease of ungranted Crown land.[124]

Before the 1877 award, Morris was moving towards a full purchase of Ohauiti 2. On Morris's urging, in 1874 or 1875, the would-be sellers wrote to Government officials asking permission to survey the land so that it might be sold. In 1875, 15 of the future awardees wrote to Clarke asking him not to place alienation restrictions on the block.[125] It appears that around this time the 15 had agreed to sell the land to Morris. In February 1877, 12 of the 15 wrote to Clarke informing him that they were selling the land to Morris.[126] Morris eventually purchased Ohauiti 2 in a transaction finalised in 1878. He probably paid £2000 for the block, some of which was charged against debts owed either to him or to storekeepers. Several Maori, aggrieved at not receiving any of the proceeds or at being excluded from the decision to sell, protested against the sale.[127]

A petition was lodged in 1878 by Te Korowhiti Tuataka alleging that she had been wrongfully left off the list of Ohauiti owners compiled by Clarke and that Clarke had assisted Morris in purchasing the block. Clarke, Morris, and Te Ranapia Kahukoti, a native assessor assisting the resident magistrate at Tauranga and one of the sellers of Ohauiti 2, disputed these allegations before a Native Affairs Committee hearing in October 1878. The committee decided that Te Korowhiti's name had been left off the list because of her relatives' 'forgetfulness' and that Clarke had not assisted Morris in the purchase of Ohauiti 2.[128] The committee did, however, recommend that all land awarded to Tauranga Maori after 1878 be made inalienable. A newspaper notice was duly published, which stated that land returned to Maori at Tauranga was not to be sold.[129]

Crown counsel submitted that, as the inquiry into the petition of Te Korowhiti demonstrated, Clarke did not assist Morris or, indeed, Pakeha generally in acquiring Maori land. According to Crown counsel, Clarke had advised Tauranga Maori not to sell their lands, and those who sold Ohauiti 2 to Morris kept the fact of the sale hidden from him. Also, Clarke required the unanimous consent of the 'whole group' before he allowed the removal of the restriction on a block.[130] Counsel also submitted that the Native Affairs Committee's

123. Document G1, p 65
124. Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, p 6
125. Document G1, p 67
126. Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, pp 20–22
127. Ibid, pp 16–18
128. Ibid, p 1
129. Document M11, p 51
130. Document O2, pp 91–93

investigation provided the 'best evidence available' for an understanding of Maori attitudes toward land sales at Tauranga.[131]

These assertions are misguided. They are based largely on the testimony of the assessor Te Ranapia Kahukoti before the 1878 Native Affairs Committee inquiry. Ranapia repeatedly said that Clarke did not know of the sale before it took place or even before he drew up the list of owners for Ohauiti 2. Ranapia stated further that all those with known interests in the block were included in Clarke's list when the block was awarded.[132] The evidence of Ranapia should be treated with care: it was shown at the hearing that, prior to being examined, he had been in contact with Clarke and Morris in Wellington. He was also an outspoken proponent of selling land to Pakeha.[133] Ranapia contradicted his claim that Clarke did not know that some Maori had decided to sell Ohauiti 2 when he awarded the block by stating that he had written to Clarke earlier asking permission to have the land surveyed because he and others intended to sell it to Morris. Ranapia claimed his hapu (Ngai Te Ahi) alone numbered 200 (not to mention other hapu who claimed interests in Ohauiti), yet he asserted that all those with interests in the block were included on Clarke's list of just 35 names. Several other witnesses before the committee claimed to have been left off the list of owners despite their customary claims.

On top of this, Morris refused to answer some of the committee's questions, Clarke contradicted himself over the time when he became aware of Morris's proposed purchase, and Maori witnesses offered many conflicting versions of how the list of owners was made and how the sale to Morris was executed.[134] We consider that the Crown's submissions concerning Ohauiti 2 cannot be proven from an examination of the minutes of evidence in the Native Affairs Committee's report on Te Korowhiti Tuataka's petition.

It is clear, however, that, well before the block was Crown granted, Clarke knew of the agreement to sell Ohauiti 2 to Morris. Because of this, no restriction on alienation was placed on the grant when it was finally issued. It was relatively easy for Morris to obtain the consent of the 'whole group' of owners to his purchase for the simple reason that the number of owners on the list made by Clarke was so small. Moreover, the list included all those who had already entered into an agreement with Morris to sell. Nearly all of the land returned in the remainder of the confiscation district before 1880 had no restrictions placed on alienation.[135] Like many of the reserves inside the confiscated block and Te Puna–Katikati, Ohauiti 2 was awarded by Clarke not in a way that gave Tauranga Maori a secure title to their land but in a way that helped facilitate agreements to sell that had already been entered into by those with a less than complete customary right to the land.

131. Document 02, p 100
132. Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, pp 20–23
133. Ibid, p 20; doc M11, pp 53–54
134. Native Affairs Committee, 'Report on Petition of Mrs Douglas', AJHR, 1879, I-4, p 3
135. 'Report from Commissioner J A Wilson to the Hon the Native Minister', AJHR, 1879, G-8, p 1

(2) Waitaha 2

Waitaha 2 was an 8082-acre block to the east of Ohauiti 2. It ran from the inner harbour at Welcome Bay to the inland bush block Waoku. As noted in chapter 10, Clarke was temporarily reappointed commissioner of Tauranga lands to investigate the Otawa–Waitaha lands in March and April 1878. Clarke's proposed subdivisions and allocations of the land were protested by Maori from several different iwi. Clarke's successor, Wilson, dismissed all these protests, but he did make one amendment to Clarke's proposed awards: he divided the Ngati He allocation into two blocks, Otawa 1 and Waitaha 2. Waitaha 2 was awarded to around 90 owners and Otawa 1 to 30.[136]

Waitaha 2 was awarded in 1881 with no restrictions on alienation.[137] However, it had long been in the occupation of Jonathan Brown, who had spent several years trying to gain title to 7740 acres of the block. Brown began leasing the block in 1868 and soon began purchase negotiations. It appears that he paid £2800 to his lessors in the 1870s for most of the block.[138] Brown later claimed the deed of this sale had been lost in a shipwreck, so he applied to the Supreme Court to gain legal title to Waitaha 2 in 1884. The court ruled that Brown was entitled to be registered as the owner of the block in April 1884.[139]

In closing submissions, the Crown argued that Brown's drawn out attempts to gain title to Waitaha 2 were a good example of 'the very real hurdles that lay in front' of private purchasers of Maori land at Tauranga. In our view, the biggest hurdle Brown faced was losing his deed. The other hurdle noted by the Crown was the imposition of alienation restrictions.[140] It seems likely that, after the hearings into the Waitaha block, one of the commissioners had a 'certificate' made listing the owners of Waitaha 2. As we have pointed out, such certificates were not legal title but merely recommendations for Crown grants, which the Governor could issue at his discretion. At this stage, a restriction on alienation existed, possibly in writing on the 'certificate' but certainly in the minds of the commissioners, the Native Department, and Brown. This belief arose from the 1878 public notice that declared that all awarded land at Tauranga would be inalienable. When the Crown grant for Waitaha 2, which was legal title, was issued in August 1881, it had no alienation restrictions placed on it. Brown had successfully lobbied the Government to issue the grant without restrictions.[141]

The 1878 notice probably delayed the issuing of the Crown grant for Waitaha 2, as Brown took the time to ensure that there would be no restrictions on alienation included in the grant. His difficulty in gaining title to Waitaha 2 was essentially due to bad timing. In any case, the regime restricting alienation merely delayed the completion of Brown's title, not his original purchase negotiations. The block had been sold long before any Crown grant – and

136. Document L2, pp 43–49
137. Document A57, p 135
138. Document L2, p 49
139. Ibid, p 68
140. Document O2, pp 118–119
141. Document L2, pp 49–54

therefore alienation restriction – was issued for it. There was never any suggestion that the sale would be nullified and Brown denied title to Waitaha 2.

11.4.5 Wairoa Valley alienations

Land at the headwaters of the Wairoa River and the Te Puna Stream was sought by speculators because of its potential for gold finds and for the value of the timber in the area. From the late 1860s, when a small find of gold was made, pressure was applied by settlers and speculators to 'open up' the Wairoa blocks.[142] However, none was returned to Maori before 1880. In 1877, Clarke, as under-secretary, recommended to the Native Minister that alienation restrictions should not be placed on any of the 'Kaimai' blocks.[143] These blocks were investigated and awarded in the late 1870s and early 1880s. Counsel for the Wairoa hapu submitted that the alienation of blocks in this area was an example of the Crown failing adequately to protect Maori and their land.[144] These allegations of Treaty breach are covered in general terms at section 11.6.

(1) Whakamarama, Kaimai, Kumikumi, Ongaonga

Brabant awarded the Whakamarama block to Pirirakau and some hapu with Tainui connections in 1881 and 1882. It was awarded in two blocks: Whakamarama 1 (3330 acres) and Whakamarama 2 (7815 acres).[145] Whakamarama 2 was awarded to only 22 individuals, even though it was a large block of more than 7000 acres. All of the awardees were surrendered 'rebels' or 'loyal' Maori. These 22, led by Kerekau, asked Brabant to issue a 'certificate' for the block with a view to selling it. What little evidence is available indicates that the Kerekau group was in negotiation to sell land at Whakamarama to F A Whitaker, Frederick Whitaker's son. No alienation restrictions were placed on the block and Whakamarama 2 was sold as soon as it was awarded. Two non-sellers' interests in Whakamarama were partitioned off and awarded as Whakamarama 2A (735 acres). Whakamarama 1 was later awarded to 181 owners, the majority of whom were 'rebel' Pirirakau but who also included the 22 who had sold Whakamarama 2, and made inalienable.[146] It is clear that Brabant awarded these blocks on a basis other than customary entitlement. Awarding over two-thirds of the land in Whakamarama to only 10 per cent of Pirirakau, none of whom were the acknowledged leaders of the majority of the hapu, was clearly to the detriment of the other 90 per cent of the customary owners.

142. Document A37(a), pp 94–105
143. Ibid, p 112
144. Document N14, pp 23–24
145. Document A57, p 265
146. Document B1, pp 31–33

Brabant also awarded titles to Kaimai, Kumikumi, and Ongaonga in 1881. His awards in these blocks followed the pattern of Whakamarama. Each block was subdivided into two, with the larger portion being awarded to a relatively small number of Maori who were negotiating or had negotiated to sell the land. The smaller portion in each block had a large number of Maori from multiple hapu listed as owners and was set aside as an 'inalienable reserve'. The larger subdivisions at Kaimai, Kumikumi, and Ongaonga were sold to a J B Whyte, who had already, before Brabant's investigation, paid 'substantial deposits' to purchase the three blocks. Brabant wrote to Native Department under-secretary T W Lewis in April 1882 stating that the price Whyte was paying for the blocks was estimated at four shillings ninepence per acre. He felt that this was not a high price, but nor was it 'exceptionally low' when compared with other sales in the area.[147] Crown grants with no alienation restrictions were issued for Kumikumi 1 in 1881, and for Ongaonga 2 and Kaimai 1 in 1884.[148] Once these grants were issued, Whyte gained title to the blocks.

(2) Waimanu, Te Irihanga, Oteoroa, Te Mahau, Poripori

Barton investigated parts of Waimanu, Te Irihanga, Oteoroa, Te Mahau, and Poripori in the course of his nationwide inquiry in 1886 into the restrictions on alienation of Maori land. The speculators Russell (Te Mahau), J F Buddle (Te Irihanga 1), John Wilson (Oteoroa 1), and Hugo Friedlander (five subdivisions in Waimanu and Poripori) had been engaged in land purchases before 1886 and had applied to have 'alienations removed' from these blocks.[149] Brabant drew up lists of owners for the blocks in September 1882, but the speculators had been purchasing alleged shares in the blocks well before ownership was determined.

In his report, Barton stated that Friedlander and his agent had defrauded the owners of Waimanu and Poripori in their attempts to buy the blocks and recommended that restrictions on the blocks not be removed. Barton discovered that the agent purchasing these blocks had forged the signatures of alleged sellers, charged money which had never been paid to individual Maori against the blocks, and claimed to have purchased portions of Waimanu which had in fact never been purchased. In 1884, Brabant had recommended that these alleged purchases be allowed, stating that an adequate price had been paid.[150] Obviously, Barton disagreed, but he did recommend that the sale of 450 acres of Waimanu 2 be allowed to proceed. This was to allow Maori to use the unpaid portion of the purchase price to defray the costs of attending Brabant's investigations.[151]

Friedlander petitioned the Native Affairs Committee, which overturned Barton's recommendations regarding Waimanu 1C and Poripori 1 and 2 in August 1886.[152] After objections

147. Document A37(a), pp 128–129
148. Document A57, pp 135–136
149. The speculator John Wilson is not the same person as J A Wilson, the commissioner of Tauranga lands.
150. Document A13, p 83
151. 'Report by Mr Commissioner Barton', AJHR, 1886, G-11A, pp 1–2, 6–7
152. Document A13, p 87

from the Justice Minister, Joseph Tole, in December 1886, the Cabinet refused to allow the restrictions to be removed. Friedlander again petitioned the Native Affairs Committee in 1887, and the committee upheld his petition a second time, recommending that restrictions on the blocks be removed. Friedlander was finally able to perfect title to the blocks in 1888, over the objections of Colonial Secretary Thomas Hislop.[153] Barton recommended the removal of restrictions on Te Irihanga, Oteoroa, and Te Mahau to allow the sales to proceed, but only because he could find no concrete evidence of fraud. He seemed in little doubt that these transactions were made in the same manner as the sales of Waimanu 1C and Poripori 1 and 2.[154]

Barton made an important observation on the nature of all these transactions. He stated his opinion that the transactions were legally void because they were purchases of shares in blocks where ownership had not yet been determined under the Tauranga District Lands Act. However, he did not believe that they were illegal.[155] This is an opinion with which we concur. Dealing in as-yet unawarded land within the confiscation district was not in violation of any law before 1883. But contracts entered into to buy shares in unawarded land were not enforceable. Purchasers were buying what Barton described as a 'chance' that the seller would be awarded a share in the block which they could then transfer to the buyer.

11.4.6 Summary of alienation of Maori land before 1886

The Government had several statutorily prescribed instruments to regulate the sale and lease of Maori land (see sec 11.1), but these had little bearing on the alienation of Maori land at Tauranga in the years to 1886. Restrictions on alienation, which could be and indeed sometimes were placed on Crown grants of returned Maori land, were incidental to the local circumstances present at Tauranga in the period. Chief among these circumstances was the fact that payments were made and deeds of conveyance signed for blocks of land that had yet to be either investigated by the commissioners of Tauranga lands or made the subject of Crown grants. This situation arose partly because of the long delay between the confiscation and return of land in the remainder of the confiscation district and the insistence by the likes of Whitaker that pre-existing agreements to purchase Maori land be accounted for in the process of awarding land. Invariably, when blocks or reserves were finally 'returned' it was done in a way that allowed pre-existing transactions to be finalised and title to eventually be issued in favour of the purchaser – be that the Crown or individual Pakeha. This widespread practice meant that restrictions on alienation were of limited importance at Tauranga. Where a restriction was placed on a commissioner's 'certificate', this did sometimes cause delays in

153. Document A22, pp 87–90
154. 'Report by Mr Commissioner Barton', AJHR, 1886, G-11A, p 4
155. Ibid, p 3

purchasers perfecting their title. Without fail, however, they were eventually removed and the transactions – no matter how dubious – were finalised. Some land awarded for the use of hapu before 1873 had a trust written into the Crown grant. This mechanism proved ineffectual in stemming the alienation of the land because the trustees were able to sell it as if they were absolute owners.

The 1878 prohibition on the alienation of returned land (see sec 11.4.4) had no long-term effect on stemming or regulating the alienation of Maori land. According to Barton, by the early 1880s it was considered a 'dead letter' by the Government and private purchasers alike.[156] Again, this came about because, by the way in which returned land was being awarded, the commissioners were facilitating transactions. More effective in restricting alienation than any central Government policy was Grey's long-remembered promise at the pacification hui that some returned land in and around the harbour could not be sold. Only the Daldy purchases on Matakana (see sec 11.4.2) and some Crown purchases east of the harbour took place in this area. By 1886, this was the only part of the Tauranga district where Maori retained fertile land in relatively large measure.

11.5 Claimant and Crown Submissions

11.5.1 Claimant submissions

Claimant counsel alleged two related Crown breaches of Treaty principle stemming from the alienation of awarded land in the Tauranga inquiry district. These were submitted to be a failure adequately to supervise the alienation process and, in particular, to implement an adequate policy on restricting alienations and a failure to ensure that Tauranga Maori were left with sufficient land for their future well-being. Both these alleged failures were said to be in breach of the Treaty principle of active protection.[157] Counsel for Ngati He also alleged that the Crown failed to act in good faith toward Tauranga Maori by allowing transactions to proceed that did not comply with legislation, allowing sales that were not in the best interests of hapu, and failing to consult with Tauranga Maori before imposing on them a process of land alienation.[158]

In the joint submission, counsel alleged that the Government was aware that alienations of Tauranga Maori land needed to be restricted to prevent Maori 'pauperising themselves'. Counsel also claimed that there were significant flaws in the three criteria for lifting restrictions that were given to Brabant in 1882. They failed to require the assessment of either the land holding needs of particular hapu or the future needs of Tauranga Maori. According to claimant counsel, these criteria, inadequate as they were, were not even properly considered,

156. 'Removal of Restrictions on Sale of Native Lands', AJHR, 1886, G-11, p 2
157. Document N11, pp 193–197; doc P8, pp 44–47; see also doc N10, p 40; doc N23, p 42
158. Document N7, p 36

and lifting restrictions was merely a rubber-stamping exercise.[159] Some counsel for individual hapu made similar points in relation to the removal of restrictions on specific blocks of land.[160] Nearly all the claimants alleged that the Crown had failed to ensure that Tauranga hapu retained a 'sufficient endowment' of land for their present and future needs. We have already discussed many of these submissions at section 10.4.1.[161]

11.5.2 Crown submissions

Crown counsel dealt at length with the topic of restrictions on alienation in their closing submissions. They referred both to blocks that had no restrictions placed on them at all and to blocks where restrictions were placed on a title but later removed. In the case of the former, it was submitted that it was often Maori themselves who requested that no restrictions be placed on their awards. The Crown assented reluctantly to such requests. Maori were described as resenting 'any fetter on their ability to manage their lands as they thought fit'. In regard to the lifting of alienation restrictions, the Crown submitted that, where willing Maori sellers and Pakeha purchasers existed, it was reasonable to lift restrictions. Making land permanently inalienable was described by Crown counsel as a breach of article 3 of the Treaty. The Crown asserted, in response to claimant submissions, that the Government did inquire, as much as possible, into the sufficiency of other lands held by hapu attempting to sell their blocks. The most likely conclusion these inquiries would have come to, according to Crown counsel, was that because the Maori population was declining, hapu would in the future not require as much land as they held at that time.

Generally, the Crown concluded, the system whereby the Government supervised transfers of land from Maori to settlers was 'fair and effectual'. Maori agency had to be acknowledged, in Crown counsel's view. Often, Maori wanted to sell land although Crown agents had advised them not to. In such cases, the Crown had no right to stop them.[162]

11.6 Treaty Finding on Crown Role in Alienation of Maori Land

Here, we make a finding on the allegation of the claimants that the Crown failed to protect the interests of Maori in the way in which it allowed land to be alienated at Tauranga. We delay making a finding on the related question of whether the Crown ensured that Maori retained a

159. Document N11, pp 186–192

160. Document N6, p 20; doc N7, pp 32–37; doc N9, p 36; doc N10, pp 37–40; doc N17, pp 22–25; doc N21, p 13; doc N22, pp 17–19

161. Document N5, p 5; doc N7, p 35; doc N10, p 40; doc N11, pp 178–179; doc N14, p 24; doc N15, p 15; doc N17, p 25; doc N18, pp 20–22; doc N19, p 18; doc N20, p 38; doc N21, p 16; doc N22, p 19; doc N23, pp 42–43

162. Document O2, pp 80–100

sufficient endowment of land for their future needs until section 11.8. This enables us to view the matter in light of a discussion on the impact of land loss on Tauranga Maori, which we have in section 11.7.

We agree with Crown submissions that Maori had a right to sell land under the provisions of the Treaty of Waitangi. However, we disagree that the Crown provided adequate supervision of this process at Tauranga up until 1886. The Crown could allow Maori to sell land under the provisions of the Treaty, but this had to be balanced against its obligations to protect Maori and their land. And we do not believe that the Crown adequately protected Tauranga Maori or their land.

The notion, put to us by the Crown, that, had restrictions on the alienation of awarded land been too rigorous, Maori 'agency' would have been curtailed needs to be balanced against the Crown's other Treaty obligations. As far as the concept of agency is present in the provisions of the Treaty and the principles arising out of them, it is an agency or autonomy guaranteed to chiefs and, by extension, to their hapu. This is called tino rangatiratanga in article 2 of the Treaty. The process of title individualisation and subsequent sales of land undermined the rangatiratanga of Tauranga chiefs and the autonomy of their hapu. The collective notion of autonomy that is implicit in the Treaty needs to be examined in conjunction with the Crown's fiduciary obligation actively to protect Maori people in the use of their lands. We acknowledge that the Treaty promised Maori much in this regard. In practical terms, providing Maori with both the autonomy envisaged in the Treaty and active protection of their land ownership would have been very difficult. It is not reasonable to expect the Crown to have struck a perfect balance at all times between these two sometimes contradictory aspects of the Treaty, especially in the difficult circumstances that marked the years from 1864 to 1886. It is, however, reasonable to expect the Crown to have attempted to fulfil its Treaty obligations, as far as possible, when what was at stake was something of such vital importance, in Treaty terms, as the permanent alienation of the Tauranga Maori estate.

No matter how Maori agency is defined, the land transactions at Tauranga from 1864 to 1886 do not demonstrate it. Sales were often made by a minority of those with customary rights to the blocks being sold. This minority was able to conduct transactions outside of normal community sanctions owing to the way in which the commissioners awarded reserves and returned land. These transactions were often made without the consent of the leading chiefs of the local hapu and led to widespread protest from those who were left out of the sales. Numerous land transactions were also made, by the admission of the commissioners themselves, because of a lack of food, medicine, or other necessities amongst Maori. Some sales were made after the Maori sellers had been enticed into debt by Crown or private land purchase agents, and shares in some blocks were sold without the willing consent of the 'vendors'. Given these circumstances, it is impossible to conclude that Tauranga Maori in general were free and willing sellers of land in the period before 1886.

We note that some officials at Tauranga recorded that Maori were descending into poverty and that the Crown needed to 'save them from their own reckless extravagance'.[163] The officials, such as Clarke, who said that Maori had to be protected from themselves were the very same ones who decided if restrictions on alienation would be imposed and, when they were, they were the ones who advised the Governor on lifting them. As we have noted, the commissioners frequently awarded land to individual Maori who had already entered into sale negotiations with Pakeha or Crown purchase agents, even though they were but a minority of those with customary rights in the land. Vincent O'Malley and others have claimed that Brabant, in particular, was conscientious in ensuring that the rightful customary owners were known when land was being awarded.[164] Brabant's investigations may have been adequate, but he often proceeded to award the vast majority of a block to a minority of owners who had previously entered into agreements to sell to a Pakeha. The Native Department was aware that this occurred, but it never advised that Crown grants should be withheld or title to blocks not be transferred to the Pakeha purchasers. The fact that these transactions were usually legally void and not enforceable (see sec 11.4.5) meant that the Government could have refused to allow title to be transferred to Pakeha.

The salient characteristics of the sale process outlined above are evident throughout the period, from 1866, when Whitaker's allocation of reserves enabled purchasers to gain title to land on which they had paid deposits, through to the mid-1880s, when Brabant awarded blocks at the head of the Wairoa Valley to a minority of the customary owners who had accepted money from purchasers. The Crown's facilitation of purchases in this manner, without regard to the often dubious circumstances in which they were made, is the key factor in the alienation of returned land. It was for this reason that the Crown, on the whole, failed to stem the rapid flow of land out of the hands of Tauranga Maori, despite an awareness that this could have dire long-term consequences. Moreover, the Crown contributed substantially to this process by buying about a quarter of the land purchased or being purchased by 1886. In these circumstances, the way alienation restrictions were or were not used is of secondary importance.

In practice, the imposition of restrictions on alienation did not help to protect Maori land from alienation to private purchasers. The way the restriction regime was implemented at Tauranga did not amount to active protection of Maori by the Crown, as required by the principles of the Treaty. If the Crown was relying on alienation restrictions to prevent Tauranga Maori from suffering excessive land loss, it ought to have put more effort into ensuring that each sale was in the best interests of both those selling and any others with interests in the land. It appears that between 1864 and 1886 the Crown lacked the inclination to do this.

We have already found that the arbitrary extinguishment of customary Maori land tenure at Tauranga was in breach of the Treaty of Waitangi. One of the reasons for this finding was

163. Clarke to Native Minister, 'Reports from Officers in Native Districts', 15 May 1877, AJHR, 1877, G-1, p 27
164. Document A22, p 39

that the advent of individualised title made land susceptible to alienation. However, other Crown actions and omissions also contributed to the rapid alienation of Maori land in the region. A particular omission was the failure of the Government to rectify the injustices visited on Tauranga Maori by the Crown land purchase agents in the late 1870s. This is clearly a case where the Government failed adequately to protect Maori and their land. Though Young was not convicted of fraud for his conduct as a purchase agent, a large number of his actions had, as the assistant auditor put it, 'every appearance of being fraudulent', and Young's acquittal was a 'deplorable miscarriage of justice'.[165] Most of Young's purchases were incomplete when he was fired in 1880. However, the Native Land Purchase Department continued to use his accounts as the basis for completing those purchases, even though they were clearly based on alleged sales of interests which had not been made with the proper consent of the shareholders. The Crown had an opportunity to right the wrong caused by Young's purchasing methods by cancelling the transfer of shares to the Crown where the owners had been clearly cheated of those interests by a Government agent. In failing to do this, the Crown failed adequately to supervise the alienation process at Tauranga.

The Crown also failed to protect Maori when similar purchase methods were used by private land purchase agents. In 1886, Barton reported well-documented cases to the Native Affairs Committee of owners being 'defrauded' of their interests in as-yet ungranted blocks. Despite Barton's recommendation that these sales should not be allowed to proceed, the Government issued certificates of title in favour of those accused by Barton of acting fraudulently.

In light of these conclusions, we find that the Crown failed adequately to supervise the alienation of land at Tauranga, and in so doing failed in its article 2 fiduciary obligation to protect Maori and their land.

11.7 Impact of Land Loss on Tauranga Maori

11.7.1 Socioeconomic impact

In this report, we have now discussed the loss from Maori ownership of the confiscated block, the Te Puna–Katikati blocks, and over 80,000 acres in the remainder of the confiscation district. We now evaluate the effect of this land loss on Tauranga Maori.

Reports on the socioeconomic condition of Tauranga Maori in the years from 1864 to 1886 were relatively frequent. This contrasts with the lack of such evidence in the period up until 1864, which we have already noted (see sec 3.3.2). For this reason, we are unable to arrive at firm conclusions on relative socioeconomic conditions before and after 1864. Here, we evaluate the position of Tauranga Maori between 1864 and 1886 in order to determine if they were

165. 'Transactions of Messrs Young and Warbrick', 31 May 1880, AJHR, 1880, G-5, p 15

able to gain the economic benefits that they might have reasonably expected would flow from the Pakeha settlement of the district.

There is little doubt that Tauranga Maori suffered harshly in economic terms during the 1860s, 1870s, and 1880s. In seeking to understand why so much land was sold in the two decades after the Tauranga battles, the poverty of Tauranga Maori after 1864 provides a necessary context. The few 'loyalist' Ngai Te Rangi rangatira who quickly sold awards of non-customary land are exceptions to this general pattern. From the time of Te Moananui's land sales in the mid-1860s through to Ngatai's claim to have no money to buy seed in the mid-1880s, Government officials recorded that Maori were selling land as a means to survive. Only a few examples exist of sales or leases for the purpose of raising capital to develop other land. At times, officials involved in Crown purchasing actively exploited the poor economic situation of Tauranga Maori to aid the Government in acquiring shareholders' interests.[166] Evidence also exists that Maori at Tauranga alienated land to offset the cost of attending the commissioners' investigations.[167] The collapse of pre-war economic activity and the difficulty of starting anew meant that the sale of interests in as-yet unawarded blocks was one of the few avenues open to Maori who needed to raise cash after the war and the raupatu.[168]

In the immediate aftermath of the Tauranga battles, Maori attempted to resume cultivating the land remaining to them. This cultivation was coupled with some food aid from the Government and trade with military settlers. Despite these efforts, newspaper reports stated that Tauranga Maori were 'very hard up for food' in 1865.[169] After the 1867 bush campaign, the socioeconomic condition of Tauranga Maori deteriorated still further. The years until the early 1870s – during which the confiscated block was taken, the Crown purchased the Te Puna–Katikati blocks, reserves were sold by Ngai Te Rangi individuals, Otumoetai was abandoned, and tenurial uncertainty reigned in the remainder land – were marked by a significant decline in the amount of land under cultivation by Maori.

The Maori population at Tauranga declined during the second half of the 1860s at a rate faster than that of most other Maori.[170] The only iwi to suffer similarly rapid population decreases were the other raupatu tribes. In an 1868 report, Clarke attributed the decline to high infant mortality among Tauranga Maori. He noted that whole families had 'been swept away' and that many others were childless. The principal causes of death were reported to be scrofula (a kind of tuberculosis), pulmonary diseases, and 'fever' (probably typhoid).[171] For the Crown, Battersby stated that, according to Clarke's report, 'there seemed little evidence of

166. Document L2, p 74; doc A49, p 86
167. Document A57, p 126
168. Document M9, p 235
169. Ibid
170. The ratio of children per 100 women was 81 in 1874 and 78 in 1881 for 'Ngaiterangi' compared with a national Maori average of 116 in both years: see Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991), p 96.
171. 'Report from H T Clarke, Esq, Civil Commissioner, Tauranga', 7 March 1868, AJHR, 1868, A-4, p 11

want among Maori'.[172] We disagree. A population in decline because of high infant mortality caused by diseases that commonly afflict people in poverty is a clear sign of a people in want. The link between land loss, malnutrition, and the spread of infectious disease among Maori in the second half of the nineteenth century has been clearly demonstrated.[173] It is true that some Tauranga chiefs were living in relative prosperity at the end of the 1860s, but this comes as no surprise in light of the assessors' wages, pensions, reserves, and sale moneys the 'loyalist' chiefs received from the Government in return for their help during the war and its aftermath.[174] Equally clear is that the majority of Tauranga Maori did not enjoy the benefits that accrued to this small group of chiefs. Government officers and newspapers reported food shortages amongst Tauranga Maori throughout the 1870s.[175] The Maori population at Tauranga continued to decline during the 1870s and 1880s at a faster rate than those in most other areas.[176]

A clear move away from agriculture and traditional food gathering toward wage labouring or gum digging is apparent among Tauranga Maori after the mid-1860s, though they were reported to have been involved in kauri gum digging as early as 1865. By the 1870s, gum digging was widespread across the western Bay of Plenty, and in the 1880s a large proportion of Tauranga's Maori population worked the Hauraki gum fields.[177] Battersby argued that kauri gum was 'a non-seasonal, and generally high-paying, commodity', which was used by Tauranga Maori to overcome the problems inherent in relying on agricultural production.[178] Because all the evidence shows that Maori were involved only as diggers of kauri gum, not as dealers, we consider this proposition to be highly unlikely. Gum digging in this period has always been thought of as a last resort for the desperate. As one economic historian put it, during the 1870s and 1880s 'Digging for kauri gum was a poor man's industry'.[179] For Tauranga Maori, gum digging was a seasonal activity that required them to be absent from their kainga for long periods of time.[180] The Tribunal's *Muriwhenua Land Report* chronicled in detail the desperate economics of gum digging and the adverse effects that it had on the health and social well-being of Maori communities.[181]

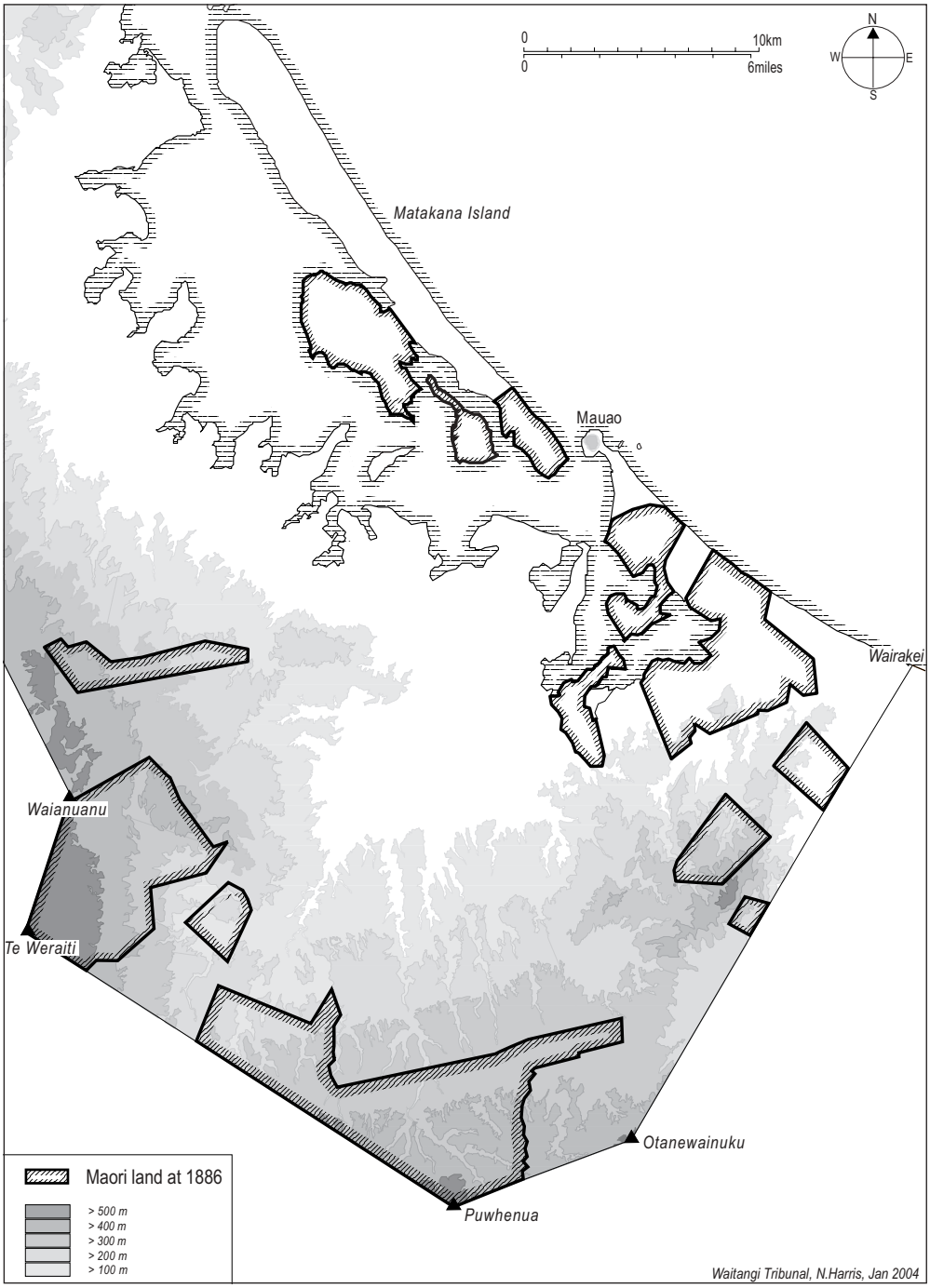
Also in the 1870s, seasonal farm labouring became a common practice for Tauranga Maori.[182] Brabant reported that, by the early 1880s, working for wages was the norm for young

172. Document M9, p 240
173. Pool, pp 62–63
174. Clarke reported in 1868 that some chiefs were living in 'comfortable weatherboard houses . . . and are making an effort to live like their white neighbours': see 'Report from H T Clarke, Esq, Civil Commissioner, Tauranga', 7 March 1868, AJHR, 1868, A-4, p 11.
175. Document M9, pp 253, 255, 261; doc K25, p 213
176. Document A13, p 67; Pool, p 96
177. Document A38, p 42
178. Document M9, p 266
179. Gardner, p 79
180. Document F3, p 100; doc J2, pp 125–126
181. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 355–367
182. Document A38, p 17

Tauranga Maori. By 1886, he reported that Maori had ceased growing cash crops and were not even growing enough food to support themselves.[183] The only noticeable exception to the decline of Maori agriculture in this period was a brief revival of large-scale wheat growing in the mid-1870s.[184] Tauranga experienced this revival in common with other regions of the country, and in Tauranga as elsewhere it was short-lived.[185] In brief, Tauranga Maori failed to move from the old, horticulture-based economy to the new pastoralist system in the years between 1865 and 1885. They did not maintain sufficient land in contiguous, farmable blocks to successfully operate profitable sheep runs in the way that some Pakeha runholders did in places such as the Waimapu Valley, Omokoroa, and on Motiti.[186] Nor did Maori move into dairying in any significant numbers, as Pakeha were eventually able to do in Te Puna–Katikati with the advent of refrigeration. Dairying became the only profitable type of farming from the 1880s for Pakeha with relatively small land holdings.[187] That Tauranga Maori failed to become dairy farmers could have been partly due to the lack of an accesible and large urban market. However, even in the early twentieth century, when a large Pakeha population was established at Tauranga, only a small number of Maori were able to succeed in dairying. When the Stout–Ngata commission reported on the Tauranga district in 1908, they stated that Maori in the county had an average land holding of fewer than 45 acres each. In contrast, Pakeha held on average more than three times this area of land per head. The only large-scale Maori agricultural enterprise noted by the commissioners was on Papamoa lands that the Crown had not been able to purchase in the 1880s and 1890s. A few Tauranga Maori were farming 400 dairy cows on these lands when Stout and Ngata wrote their report.[188] Lastly, we note that Maori did not participate in the profitable sale of produce to the Waihi goldfields, as the Irish Protestant community at Katikati were able to do.[189]

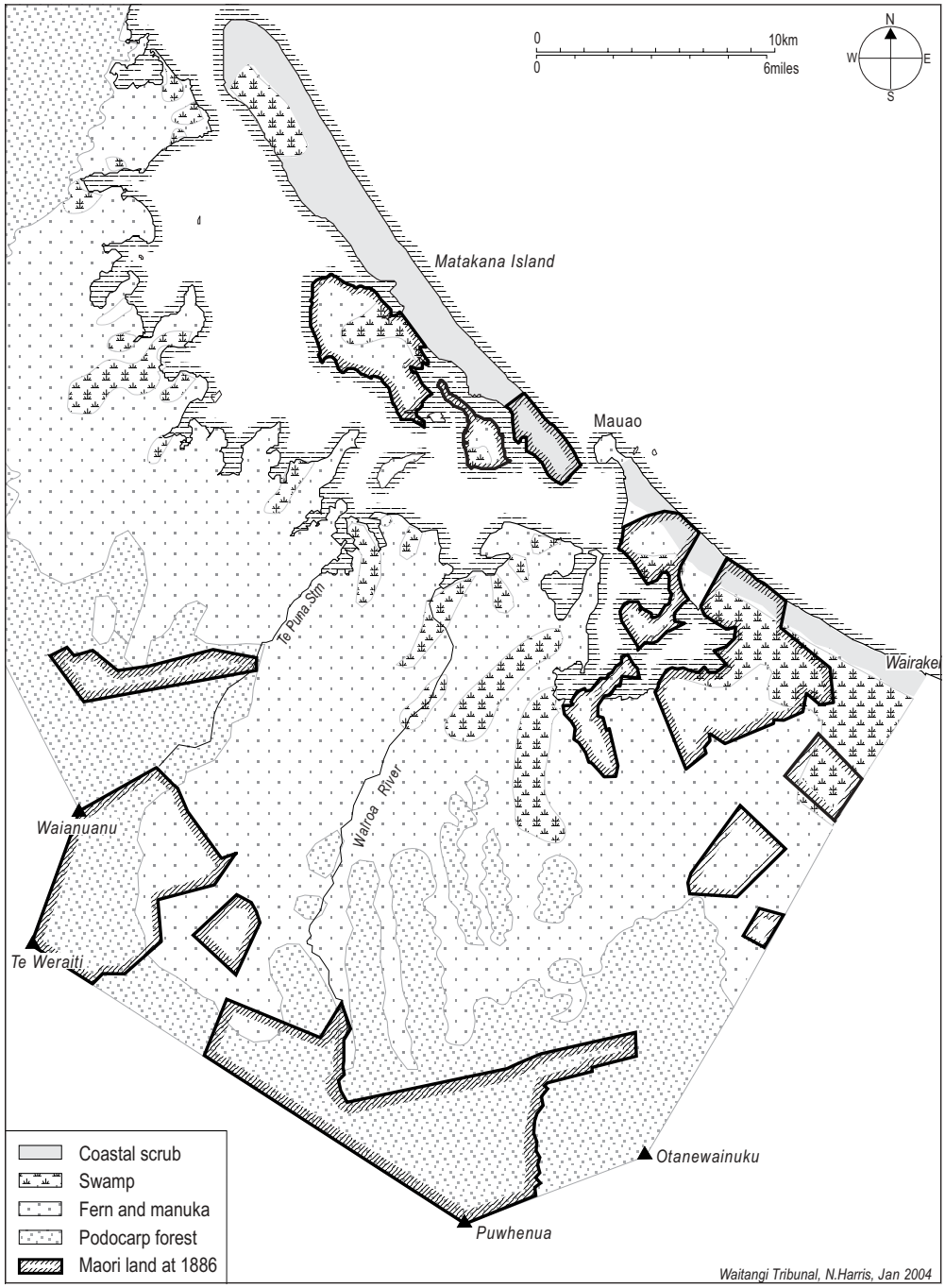
The loss of land obviously did not impact on Tauranga hapu in a uniform way. Some east harbour hapu, who had land within the area that Grey promised would be reserved, were able to keep hold of a higher proportion of land per head than the Ngati Ranginui hapu that lost much of their rohe in the confiscated block. A good deal of the land that was returned to Ngati Ranginui hapu was quickly sold by a minority of hapu members, with the approval of the commissioners but to the disadvantage of the majority. Most of Pirirakau's largest block of returned land was sold in this way (see sec 11.4.5). Ngai Te Ahi's interests in Waitaha 2 were sold by only a handful of 'owners' (see sec 11.4.4) and Ngai Tamarawaho's meagre reserves were reduced even further by the sale of a lot supposedly granted in trust for the hapu but

183. Document A38, p 39
184. Document M9, pp 257–265
185. Gardner, pp 78–79
186. Document A38, p 40; doc M9, p 248. In 1885, the only large flock of sheep in Tauranga was Brown's on the Waitaha 2 block: see 'The Annual Sheep Returns for the Year Ended 31st May, 1885', AJHR, 1886, H-8C, pp 9–10.
187. Gardner, p 73
188. 'Native Lands and Native-Land Tenure: Interim Report of Native Land Commission, on Native Lands in the County of Tauranga', 11 June 1908, AJHR, 1908, G-1K, pp 1–5
189. Evelyn Stokes, *A History of Tauranga County* (Palmerston North: Dunmore Press, 1980), pp 144, 148



Map 27: Relief map of Maori land, 1886

11.7.1



Map 28: Vegetation coverage of Maori land, 1886

sold by a few individuals (see sec 11.2.3). The result of these sales was a group of impoverished hapu, which, from the late nineteenth century, frequently petitioned the Government to set aside additional land for their use.[190] The poverty of these hapu was noted by native school inspectors, who were concerned at the impact it was having on school attendance. Inspector Pope described the situation of Ngai Tamarawaho in 1891, noting that their land at Huria was:

> little in quantity and poor in quality . . . These Natives lead a miserable existence partly at Huria, endeavouring to get some return from their ungrateful glebe, or working precariously for neighbouring Europeans . . . or wearing out their constitutions on the gum fields.[191]

At Paeroa Native School at Bethlehem in the mid-1880s, Pope noted similar problems: absence due to seasonal migration to find work; malnutrition; and death by disease. This school was attended by children from Ngati Hangarau and the Wairoa hapu.[192] It is clear that by the Depression years of the late 1880s, the hapu of Ngati Ranginui had insufficient land for subsistence purposes, let alone for participating in the capitalist farming economy.

There are clear links between the alienation of Maori land and the economic hardship faced by Tauranga Maori. There is evidence that some Tauranga Maori sold land to enable them to purchase food or medicine. Such sales exacerbated the problem of shrinking land holdings and compounded the difficulty of successfully moving into the developing pastoralist economy. Nevertheless, the loss of land was not necessarily the only cause of poverty among Tauranga Maori. Other factors, including the periodic deflation of commodity prices in the 1870s and 1880s, would have had a detrimental effect on the ability of Maori to successfully farm their remaining land.[193] More importantly, much of the land that was not sold by Tauranga Maori was unsuitable for the new pastoralist farming that emerged in the post-war period. A large proportion of the land that remained in Maori hands was inland. These blocks were bushclad, and in some parts the soils had a cobalt deficiency that made cattle and sheep farming impossible. A good deal of the land that Ngai Te Rangi retained in the east of Tauranga Harbour was gley – swampy and oxygen-deficient soil – or sandy coastal margins. Much of this land was not suited to crop or livestock production.

We now proceed to make a finding on the question of whether the Crown made sure Maori retained sufficient land for their foreseeable needs. In doing so, we must bear in mind that the quality of the land left in the hands of Tauranga Maori at 1886 was equally as important as its extent. Before doing so, however, we discuss the large body of evidence presented by the claimants on the cultural loss that accompanied the loss of land by Tauranga Maori.

190. Document A38, pp 30–38
191. Quoted in doc F3, p 100
192. Document D5, p 34
193. 'Further Reports from Officers in Native Districts', 1 June 1875, AJHR, 1875, G-1A, p 3; Sinclair, p 166

11.7.2 Claimant evidence on land loss

During our hearings, the people of Tauranga Moana stated to us that their relationship with the land is not something that can be commodified. The land is their ancestor, the lynchpin of communal society: 'It starts and ends with the whenua', in the words of Trudy Ake of Pirirakau.[194] As so many of the people of Tauranga Moana told us, they are the land; they worked together on the land and they learned together on the land. The whakapapa link was in danger of being severed, for, as Pirirakau's Mark Nicholas said, 'Our land is our ancestor and we are our land.'[195] Tai Taikato echoed the words of many when he said that the land was 'our life, our source of substance, identity, mana, knowledge and spirituality . . . Once we lost our land and way of life, we lost knowledge passed down from our ancestors and our relationship with the land was forever changed.'[196]

Delwyn Little of Ngati He told us that the relationship of Tauranga Maori with the land was compromised because of the raupatu: 'The spiritual rituals and understanding of being part of the land became less and less of a reality.'[197] This loss affected not only the past and present of Tauranga Maori but also their future. Thomas McCausland of Waitaha said, 'In a way, raupatu defined our future, not only because of the loss of land but also in terms of our identity.'[198]

The link with the land was described as necessary for the well-being of the hapu of Tauranga. Joseph Malcolm of Ngai Te Ahi explained: 'To have no land is a very great sorrow for Maori, whether as a whanau, a hapu or an iwi. Without that place to stand, you do not have the resources to sustain the whanau and hapu both culturally and economically.'[199] Dave Matthews of Ngai Tamarawaho reiterated this when he said that, without land, Maori have no standing: 'Our people have always maintained that for a person to be of some standing in some way you must have land, turangawaewae. If you have land you are somebody, if not, you are nobody.'[200] Janice Kuka of Pirirakau said that the separation of the Tauranga people from the land had been in itself a prescription for illness: 'the very fundamentals that bind a people had been lost, their relationships with the whenua and to each other as whanau, destroyed.'[201]

Tauranga Maori told us that the compulsory taking of some of their land and the subsequent alienation of much of the remainder had stripped them of their way of life, their mana, their pride, and their dignity. Raupatu had shamed them, and their tupuna had not wished to speak of it. Maureen Ririnui of Ngati He said: 'I guess no one wants to talk about how

194. Document B11, p 5
195. Document B6, p 8
196. Document J28, p 5
197. Document J29, p 8
198. Document F5, p 7; see also doc J37, p 5, where Kapuarangi Toma of Ngai Tamawhariua said: 'The Crown doesn't seem to realise that when you take from one of our tipuna, you take from their future generations.'
199. Document G6, p 12
200. Document F16, p 3
201. Document B5, p 2

they became powerless and peasants on their own lands. No one wants to talk about being disinherited'.[202] The disinheritance went further than just the loss of land, we were told. When the land was lost, the culture that depended on it was greatly harmed. Many witnesses told us of their hurt at the loss of te reo, the loss of tikanga, and the loss of youth from the district as families moved away from Tauranga. Many of the older people were especially embarrassed or pained about the loss of te reo.[203]

Some claimants worried that, with the move of families away from their hapu areas, the connection with the land would be lost forever. Janice Kuka told us of her experiences as a social worker and, in particular, how one old kuia she had visited in hospital had moved her. This woman was also Pirirakau, and when Ms Kuka introduced herself, the kuia began to tangi for her Pirirakau past. She said that, when she visited Pirirakau territory now, she found no one and no places that she knew. She was full of sorrow, Ms Kuka said, that 'on her death her children and mokopuna would never again know their connection to her people. And the thought that her tupuna had been forgotten pained her the most.'[204] Ngaronoa Ngata, a Ngati Kahu drugs and alcohol counsellor, told us of her belief in a direct link between the raupatu and the breakdown of family and health. Intergenerational dysfunction had begun with the raupatu, she said: 'our people can't even remember why they're drunk, stoned or violent anymore. To me it's all raupatu plain and simple.' Traditional mechanisms for coping had been lost, and now everyone was looking out for themselves, 'and never mind anybody else'.[205]

Some of the younger generation who still lived with their hapu told us that they were the lucky ones. Te Kapuhuia Reweti of Ngai Te Ahi told us that most of the Maori youth she knew had no sense of belonging to hapu and marae: 'if they don't feel they belong here then where do they belong? Where can they call turangawaewae? There are many rangatahi like this. They've lost their links to their marae, their hapu, their tupuna, their land. They have also lost their way in life.'[206]

Ms Rewiti told us that she worried about the lack of sufficient land for her community and that she did not know if there would be space for her in their urupa when her time came. She wanted 'A place on my whenua where I can truly rest in peace.'[207] Charles Rahiri of Ngati Kahu and Ngati Pango said that he, too, was the exception as a young man at Wairoa and that his people had inherited a legacy of loss now perpetuated in a cycle of drugs, alcohol,

202. Document J33, p 4; see also doc C20, p 7, where Ngaronoa Ngata of Ngati Kahu talks about her uncle, Robert Te Wheoro. His middle name was Te Raupatu, but no one spoke of this, not even when he died: 'He spoke of the Raupatu and said what it was like to be given a name that carried so much mamae. I had never heard the word Raupatu until I came back home. Like Uncle Robert's Maori name, it was never mentioned out loud. It was too painful, too much shame.'

203. For example, doc H4; doc D14; doc J15; doc G14; doc B5; doc B12

204. Document B10, pp 5–6; and see doc B5, p 2

205. Document C20, pp 13–15

206. Document G17, p 2

207. Ibid, p 3

violence, depression, anger, hate, and pain. Mr Rahiri stated that his hapu was given 'an inheritance of poverty from 1864'. According to his evidence, many of his cousins hated Wairoa for what it represented to them and would never return.[208] Others told us how they, or those they knew, had no land interests in the territory of their own hapu and how, with the distancing of the whanau from the hapu, the hapu structure quickly fell away.[209]

According to many claimants, other negative impacts flowed from the raupatu, title individualisation, and land sales. The land that was left to the Maori communities of Tauranga Moana was insufficient for their communal needs, and in any case was mostly transfered to individual ownership. Tribal leadership was undermined through this form of tenure – rangatira no longer controlled the use of resources and were only equal shareholders in the land. Pakeha law established the processes for land distribution and ownership. As Te Ruruanga Te Keeti said: 'The result of the loss of leadership is that the hapu essentially turned on itself and whanau were divided.'[210] Succession impacted even further on landholdings as Tauranga Maori were left with a legacy of increasingly small blocks of land, with increasingly large lists of owners. Competition among families and individuals for the remaining land inevitably became intense, especially when coupled with the loss of leadership to mediate disputes. These negative impacts were mentioned by almost all the speakers.

Te Uira Miritana is the oldest kuia of Ngati Hangarau, but she is landless and cannot speak te reo Maori. She shared with us her experience of growing up with the raupatu: 'We shed our language and our customs as quickly as we could – like soiled clothes that risked embarrassment. We were told and we were treated like we were second class. And in the end by God – we truly believed that we were.'[211] Ms Te Uira finished her korero by saying that, having grown up ashamed of being Maori, she now felt shame at giving away her Maoritanga. She said that much of the old knowledge was now lost to her mokopuna. 'Now that's what I call raupatu', she said.[212] She wondered, as did others, what her people would be like today had they not lost most of what they valued.[213]

We cannot quantify the cultural loss caused by the raupatu. It is not possible to disentangle the effects of the confiscation of land with all that came immediately after it, especially the breakdown of tribal ownership through title individualisation and the determination of succession to Maori land by the Native Land Court. There can be no doubt, however, that, for the people of Tauranga Moana who appeared before us, the raupatu was the most devastating blow suffered by their hapu. Everything else flowed directly from that.

208. Document C18, p 2
209. Document J37, p 6; see also, for example, docs G22, D14, D9
210. Document C5, p 3
211. Document D14, p 10
212. Ibid, p 11
213. Ibid, p 10; see also doc D9, p 7; doc J7, pp 8–9

11.8 Treaty Finding on Sufficient Endowment

Most claimant counsel submitted to us that the Crown failed to ensure that Tauranga hapu retained a sufficient endowment of land for their present and foreseeable needs.[214] The Crown replied that, through the trust commissioners, the Government had assessed the future needs of Maori, and that anything beyond this would have been impractical for the Government of the time. Even if further efforts to gauge future needs had been attempted, the Crown argued, the most likely conclusion would have been that because the Maori population was declining it was reasonable to conclude that Maori required less land for their future needs than they then held.[215]

Previous Tribunals have found that the failure by the Crown to ensure that Maori retained enough land for their foreseeable needs and to allow them to participate fully in the economy was contrary to the Treaty principle of active protection (see sec 1.4.2).[216] We accept that it was difficult to predict foreseeable needs, especially in view of the decline in the Maori population at Tauranga and elsewhere in the latter part of the nineteenth century and given the widespread European view that Maori were likely to become extinct. From the perspective of the twenty-first century, that view was misplaced, but it appears to have been widely held by Government bureaucrats at the time. It may have encouraged officials to assume that Maori would require less land in the future. But this did not excuse them from properly assessing the needs of hapu in their supervision of Maori land alienation. Nor did it excuse the Crown from trying to arrest the population decline by ensuring that Maori retained a sufficient endowment of land (and assistance to develop it) so that poverty did not accentuate their depopulation. These were necessary obligations under the Treaty principle of active protection.

We need to consider, therefore, whether the Crown actively protected the interests of the Maori population of Tauranga, estimated to be 962 in 1886, and whether the Crown ensured that sufficient land was retained for this population's immediate future. We must also bear in mind that the Crown's obligations to Maori arising out of the principle of active protection were principally to hapu – the main social unit of nineteenth-century Maori society.[217] The Crown was therefore obliged to ensure that hapu maintained sufficient contiguous blocks of land in areas that they customarily occupied. This endowment was necessary, in Treaty terms, to enable hapu to maintain, to the extent that they desired, their identity and social structure.

214. Document N5, p 5; doc N7, p 35; doc N10, p 40; doc N11, pp 178–179; doc N14, p 24; doc N15, p 15; doc N17, p 25; doc N18, pp 20–22; doc N19, p 18; doc N20, p 38; doc N21, p 16; doc N22, p 19; doc N23, pp 42–43; doc N11, pp 178–179

215. Document O2, p 98

216. For example, Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: GP Publications, 1987), p 193; *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, pp 825–830

217. For a statement on the Crown's Treaty obligation to protect the communal nature of the relationship that Maori have with their land, see Waitangi Tribunal, *Report on the Orakei Claim*, p 211.

A further question that needs to be considered is how much land would have been a sufficient endowment for some 950 Tauranga Maori in 1886. The Native Lands Act 1873 stated that a minimum of 50 acres of land per head of Maori population was necessary to provide for Maori needs. But even for Pakeha settlers, Government attempts to set up farming schemes based on such relatively small land holdings ended in failure.[218] The military settlement at Tauranga is a case in point, since most of the the ordinary settlers – the privates who were awarded 50 acres of fertile land – walked off their holdings. During the period under consideration, the rural economy in New Zealand was based on extensive pastoralism.[219] This required significant holdings of land. As the Ngai Tahu Tribunal pointed out, Ngai Tahu should have been given sufficient reserves to share in the development of pastoralism.[220] At Tauranga, after the failure of the military settlement, the Crown made some effort to make large-scale land holdings available to Pakeha settlers so that they could farm sheep and cattle profitably. The Crown had the reciprocal duty to ensure that Maori had sufficient land to do the same. In fact, Government officials often considered that Maori needed less land than Pakeha. An example at Tauranga was that half-caste children were granted significantly larger and better-quality holdings than other Maori.

In itself, sufficient land was not a guarantee that Maori would prosper. Other assistance, such as access to capital and expertise, would have been necessary as well. Although Government agricultural assistance of any kind was still in its infancy at 1886, new forms of assistance that became available in the following decade, such as those provided by the Department of Agriculture and advances of credit to individual (invariably Pakeha) landowners, were not made available to Maori until the late 1920s. The kind of tenure which had been imposed on Maori made it impossible for them to take out private mortages on their land in the way in which Pakeha landowners could. The Government did provide Maori with some economic opportunities, such as labouring jobs on public works projects, but these were too limited in scope to be of much long-term benefit to Tauranga Maori. They were clearly insufficient to mitigate any failure to provide Maori with sufficient land and a form of tenure that would allow capital to be raised against that land.

If the Maori population of Tauranga was 962 in 1886, about 70 acres of land per head remained in Maori ownership in the district.[221] When the quality of this land and the form of tenure it was held under are taken into account, this figure was not sufficient for the economic advancement of Tauranga hapu, let alone enough to ensure a relative degree of prosperity. Some hapu, notably those of Ngati Ranginui, held considerably less than the average. Ngai

218. Sinclair, pp 171–172

219. Brian J Dalton, *War and Politics in New Zealand: 1855–1870* (Sydney: Sydney University Press, 1967), p 3; Gardner, p 69

220. Waitangi Tribunal, *The Ngai Tahu Report 1991*, pp 828–830

221. Based on acreage calculations in document A57, p 287.

Tamarawaho is a clear example of a hapu that suffered economic deprivation as a result of landlessness.[222]

For the Crown to have ensured that Maori retained a sufficient endowment of land, it would have had to restrict more carefully the alienation of Maori land at Tauranga during the vulnerable post-war period between 1864 and 1886. This would not have been an unreasonable expectation. Throughout the period, some Crown officials were aware that Maori would become impoverished if large-scale land alienations were allowed to proceed. For example, in 1877, Clarke, as under-secretary of the Native Department, reported that Tauranga Maori were 'perfectly oblivious as to the future, and will inevitably pauperize themselves and their successors if the Government do not stretch forth a protective hand to save them from their own reckless extravagance'.[223]

We do not agree with Clarke's assertion that the alienation of Maori land was largely the result of 'reckless extravagance', but none the less his statement shows a perfect understanding by an agent of the Crown of the link between land loss and poverty. Moreover, Clarke's choice of phrase succinctly accords with the Crown's Treaty obligation actively to protect Maori from this loss of land. Talk of a Pakeha Government 'stretching forth a protective hand' to Maori may appear patronising to twenty-first century readers. Yet, it is wholly in line with the Government's obligations under article 2 of the Treaty. The intention of those who drafted the Treaty was, indisputedly, to protect Maori from the negative effects of colonisation that had been observed in other settler societies. Excessive land loss was one of the principal 'evils' that Colonial Secretary Lord Normanby had hoped to protect Maori from when he gave his instructions regarding the Treaty. British Government officials understood this at the time the Treaty was signed.

Clarke was clearly aware of the poverty that awaited Tauranga Maori if the Government did not intervene to stop the widespread alienation of their better quality land. Unfortunately, in some of his other actions, Clarke did not show the same concern for the future needs of Tauranga Maori. Nor did his successors as commissioner of Tauranga lands, Wilson and Brabant.[224] They both frequently recommended that dubious sales of 'surplus Native land' to private speculators and the Crown be allowed to proceed. It is true that some Maori land did remain unfarmed during the many years that the commissioners took to make the awards. This was not because the land was 'surplus': rather, it was because it was unfarmable or

222. Document F3, pp 97–104

223. Clarke to Native Minister, 'Reports from Officers in Native Districts', 15 May 1877, AJHR, 1877, G-1, p 27

224. Wilson claimed in 1879 that, when Clarke expressed concern at the consequences of the alienation of Maori land, he was unaware of the extent of the Tauranga district and in reality another 60,000 acres of surplus Maori land existed that Clarke had been unaware of. He also stated that the 50-acre rule of the Native Lands Act 1873 was not legally applicable to Tauranga and was an inappropriate measure because of the uneven distribution of land amongst Tauranga Maori. He stated that many Maori of the district 'have not a dozen acres apiece': see 'Tauranga District Lands Acts (Report from Commissioner J A Wilson to the Hon the Native Minister)', 8 July 1879, AJHR, 1879, G-8, pp 1–3.

because Maori lacked the capital to develop it. As we have discussed above, the Government did pass some law and develop some policy that was partly aimed at preventing the rapid alienation of Maori land. In practice, however, this was wholly inadequate for the purpose of ensuring that Tauranga Maori maintained sufficient land for their foreseeable needs.

We therefore find that the Crown was in breach of its article 2 obligations actively to protect Tauranga Maori by failing to ensure that they both retained enough land of sufficient quality for their foreseeable needs and possessed the means to develop it.

11.9 Chapter Summary

The main points in this chapter are as follows:

- Though approximately 150,000 acres within the confiscation district had been returned to Maori by 1886, by that same date over half of it had been sold either to the Crown or to private purchasers. Much of the land retained by Maori at 1886 was of little or no use in the economy of the late nineteenth century. In socioeconomic terms, Tauranga Maori suffered as a result.
- The commissioners' practices in the period 1865 to 1886 facilitated the large-scale loss of land by Maori at Tauranga. Land was frequently 'returned' to a minority of those holding customary interests in it. This minority had often previously entered into agreements to sell the land to Pakeha.
- The Crown failed adequately to supervise the alienation of Maori land at Tauranga before 1886. It also failed to ensure that the hapu of Tauranga retained sufficient land for their foreseeable needs. The Crown therefore was in breach of the Treaty principle of active protection.

CHAPTER 12

CONTINUING STRUGGLE, 1886–2003

12.1 Introduction

The protest by Tauranga Maori over the raupatu has endured for more than 100 years, as this chapter demonstrates. Here, we provide a linking discussion on matters relating to the raupatu between the end of our main discussion, around 1886, and the recent submission to the Tribunal of the claims that are the subject of this inquiry. The Tauranga district inquiry has been divided into two stages, with this first stage focusing on the raupatu and subsequent events to circa 1886. Nevertheless, in this report we also need to examine post-1886 appeals by Tauranga Maori over the raupatu and attempts by the Crown to resolve those appeals prior to the submission of claims to the Tribunal. The two most notable attempts to resolve the grievances – the 1927 Royal Commission on Confiscated Native Lands and Other Grievances, popularly known as the Sim commission, and the Tauranga Moana Maori Trust Board Act 1981 – are discussed. Since Tauranga Maori did not regard either of those 'settlements' as adequate, they continued to seek a resolution of their raupatu grievances. The passing of the Treaty of Waitangi Act in 1975 and its amendment in 1985 meant that, for the first time, the principles of the Treaty of Waitangi needed to be applied to the resolution of the Tauranga Maori raupatu grievances.

The Crown has not made submissions or submitted research reports on the matters discussed in this chapter. However, several claimant submissions and research reports have addressed these issues. One in particular that goes into some detail is Vincent O'Malley's report 'Aftermath of the Tauranga Raupatu, 1864–1981', which was commissioned by the Crown Forestry Rental Trust.[1] It is based on documents in the *Raupatu Document Bank*, which we have also examined.

12.2 Post-Raupatu Protests to 1927

We begin by noting that, for most of the period under consideration, Tauranga Maori had considerable difficulty in obtaining a fair hearing of their raupatu grievances. Though they protested to Government officials and politicians, and petitioned Parliament, their protests

1. Document A2, pp 209–221; doc A22, pp 96–185

often received scant sympathy or support. Few Government officials or politicians were willing to admit that there had been any fault in the handling of the Tauranga confiscation. Petitions to Parliament were considered by the Native (later, Maori) Affairs Committee, which commonly recommended that no further action be taken on the petitioners' pleas. In response, some petitioners resubmitted their petitions year after year, almost always with the same result.

In his report, O'Malley listed 57 petitions from Tauranga Maori between 1873 and 1935 relating to their lands.[2] Although he noted that his list may not be complete, it provides sufficient information for us to make some general comments on the petitions. Between 1873 and 1889, most of the petitions listed related either to the Te Puna–Katikati purchase or to the subsequent return of land there and elsewhere in the confiscation district. Seven of the petitions on the Te Puna–Katikati purchase were submitted by Renata Te Whauwhau, who complained that he and his fellow petitioners had been left out of the purchase. These petitions were variously signed by between 44 and 55 persons. However, the committee accepted the official line, maintained since the purchase was 'completed' in 1871, that all those with interests in the blocks had received payment or compensation.[3] Each time Renata renewed his petition, the committee reported that 'no new evidence had been adduced' and consequently no action was recommended.[4]

According to O'Malley, early petitions relating to the confiscation were usually lodged by individuals or hapu rather than iwi. Some petitioners complained that their land had been confiscated 'for offences of others', while others said that they had been wrongly excluded from titles to returned land, which were sometimes awarded to single individuals and quickly sold by them. A frequent petitioner in the latter category was Te Korowhiti Tuataka.[5] We examined her case with other petitions relating to the sale of awarded land in chapter 11, so we make no further comment here.

After the turn of the century, other kinds of petitions were submitted. In 1911 and 1912, the first petitions were lodged on behalf of the 'Pirirakau tribe' over their exclusion from awards for lots 16, 154, and 184 of the parish of Te Puna. These petitions were referred to the Government for consideration. Then, in 1915, R Tahuriorangi and 136 others of Ngati Ranginui petitioned for relief because of the confiscation of their lands. Ngati Ranginui submitted more petitions after the First World War ended. In 1920, George Hall and nine others of Ngai Tamarawaho petitioned for a grant of land, and in 1923 Nepia Kohu and 628 others petitioned for 'relief from oppression caused by erroneous inclusion of their lands' in the Tauranga confiscation district.[6] It was these Ngati Ranginui petitions that were referred to the Sim commission.

2. Document A22, pp 204–217
3. Ibid, pp 97–98; petition 248/1881, AJHR, 1881, I-2, p 19 (doc A22, p 98)
4. Document A22, pp 208, 211, 214–215
5. Ibid, p 99–101
6. Ibid, p 214–216

12.3 The Sim Commission, 1927

12.3.1 The establishment of the commission

The decision of the Reform Government to appoint a commission of inquiry into the confiscations needs to be seen in the context of the time. The establishment of the commission was one of a number of initiatives taken by the Reform Government in the aftermath of the First World War in recognition of the impressive contribution made by the Maori Pioneer Battalion. It was one of several inquiries into historical Maori land grievances initiated by Gordon Coates, the Reform Government's Native Minister (1921–28) and Prime Minister (1925–28). Coates was actively supported by the two leading Maori members of Parliament: Maui Pomare, a Minister in the Reform Cabinet, and Apirana Ngata, who, although a leading member of the opposition Liberal Party, was a confidant of Coates's. Maori at large sensed the chance for a resolution of their grievances and flooded Parliament with petitions. These included the petitions from Ngati Ranginui mentioned above.

In 1923, Pomare and Ngata led a deputation of 70 prominent Bay of Plenty, Waikato, and Taranaki Maori to Parliament, where they urged Coates to appoint a royal commission to investigate the grievances arising from the confiscations.[7] Coates reacted favourably. He even asked Pomare, who represented the Western Maori electorate, to elicit further petitions from Taranaki and Waikato tribes detailing specific charges against the Crown for such a commission to consider.[8] At this time, the opposition Labour Party was promising a commission to investigate Maori grievances 'arising out of or subsequent to the Treaty of Waitangi'. Coates did not go that far. Having gained the approval of Cabinet,[9] he told Parliament that he intended to set up a commission to 'allow the Natives the fullest possible hearing, and to make recommendations to the Government and to Parliament'.[10] However, he did not intend to allow those recommendations to be guided by the Treaty of Waitangi. He told Parliament that:

> The failure to obtain consideration in the past has been due largely to the ill-advised attempts by the Natives' advisers to rely on the terms of the Treaty of Waitangi. The obvious answer to that claim is that such reliance is propounded on behalf of men who repudiated the Treaty, and with the Treaty the cession of sovereignty to the Crown, which was the basis of the Treaty.[11]

Accordingly, the Sim commission was instructed 'not [to] have regard to any contention that Natives who denied the sovereignty of Her then Majesty and repudiated Her authority

7. 'Maori Lands, Protest Against Confiscation, Chiefs visit Wellington, Royal Commission Sought', MA85/8 (RDB, vol 50, p 19,601)
8. Coates to Pomare, 13 February 1925, MA85/8 (RDB, vol 50, p 19,593) (doc A22, p 104)
9. Memorandum for Cabinet, 10 September 1925, MA85/8 (RDB, vol 50, pp 19,569–19,571)
10. Joseph Coates, 28 September 1925, NZPD, 1925, vol 208, pp 773–774 (doc A22, p 105)
11. Joseph Coates, *New Zealand Gazette*, 1 October 1925, MA85/8 (RDB, vol 50, p 19,565)

could claim the benefit of the provisions of the Treaty of Waitangi'.[12] In his discussion of the Treaty, Coates was expressing the conventional wisdom of his time, when all authorities, including scholars such as Ngata, were content to rely on the English text of the Treaty.[13] All assumed that the sovereignty Maori ceded to the Queen in article 1 was absolute and indivisible, and not qualified by their retention of chieftainship in article 2. The commission's instruction was also based on an assumption that Maori had been in rebellion and had therefore been in violation of the English version of article 1 – an assumption that had already been challenged by the petitioners, as we note later.

The commission was appointed on 18 October 1926, although it did not begin hearings until 9 February 1927. Sir William Sim, a judge of the Supreme Court, was appointed chairman. The other two members were Vernon Reed, a legislative councillor from Kawakawa, and William Cooper, a native assessor of Gisborne and the only Maori representative on the commission. David Smith appeared for most of the claimants and C H Taylor for the Crown.

In addition to the constraint on considering the Treaty of Waitangi, the terms of reference placed other substantial limitations on the commission's inquiries. Importantly, it could consider only whether confiscation as applied was excessive, not whether it was justified in the first place. The terms of reference required the commission to inquire into and report on four questions. These were whether the confiscations 'exceeded in quantity what was fair and just'; whether any land was wrongly included in the confiscations; whether any Maori were, in the opinion of the commission, 'justly entitled to claim compensation'; and whether reserves made subsequent to the confiscations were adequate for the maintenance of 'any particular tribe or hapu'.[14] The commission was also directed to inquire into 56 petitions listed in its schedule, most of which related to the confiscation of Maori land in various parts of the North Island. Included in that list were the three petitions from Tauranga Maori noted above. In addition, one of the Te Arawa petitions, lodged by Te Hautapu Hira and 23 others of Waitaha, referred to the confiscation of 'certain Te Puke lands' that were part of the Tauranga confiscated district.

12.3.2 The commission's Tauranga inquiry

The commission began its hearings at New Plymouth on 9 February and concluded them at Wellington on 12 May 1927. It held one hearing at Tauranga, which began on 31 March and lasted a little over two days. Although the commission thoroughly investigated the Taranaki and Waikato confiscations, consulting a wide range of documentary and historical materials

12. 'Confiscated Native Lands and Other Grievances – Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, p 2

13. See, for instance, Apirana Ngata, *Te Tiriti o Waitangi: He Whakamarama;* H F von Haast, 'The Treaty of Waitangi: Its Consideration by the Courts', NZLJ, vol 10, no 2 (1934), pp 20–21; 'The Effects of the Treaty of Waitangi on Subsequent Legislation,' NZLJ, vol 10, no 2 (1934), pp 13–15, 25–27

14. 'Confiscated Native Lands and other Grievances – Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Natives', AJHR, 1928, G-7, p 2

and reporting at some length, its investigation of the Tauranga confiscation was somewhat truncated. This may have been a consequence of the chairman's illness; he had terminal cancer and died some 14 months after completing the report. But it may also have been due to the commissioners' belief that the claims of Tauranga Maori were relatively insubstantial.

We do not have a full record of the proceedings at Tauranga; all that is available are some notes taken at the hearing. These were filed in the Native Minister's office and contain a brief record of counsel's submissions and a list of official papers that were submitted in evidence (including many that we have also consulted in this inquiry). They also list the witnesses called and report some of their evidence. Smith called Nepia Kohu of Ngai Tamarawaho, Henare Pihana of Ngati Ranginui, Herekau of Ngati Hangarau, and Eruera Karaka and Mita Karaka of Ngati Hinerangi. Several of these men had witnessed or fought at Pukehinahina and Te Ranga.[15] The *Bay of Plenty Times* reported the proceedings and speeches in rather more detail than the Native Department clerk, so we have mainly used that source for an account of the main submissions.

In his opening submission for the petitioners, Smith admitted that during the wars 'the Tauranga people in general stood in with the Waikato and Taranaki rebels'. He asserted that 'on the general question there should have been no confiscation'. This, he added, depended on 'who commenced the war, whether the fighting was justified or not, and whether in the circumstances confiscation should have followed'. But Smith went on to say that, if the commission were to find that the confiscation was justified, he would submit that it had been excessive both for 'loyal natives who were not secured in their ancestral rights' and for 'certain rebel natives in that they were not given enough lands for their support'. Smith quoted from records to show that 'the natives in handing over their arms were not then aware, and it was not thoroughly explained to them, that it also involved the surrender of their lands'. It was only when they were disarmed that they 'understood that the whole of their territories were to be taken'. Smith noted, as 'a curious thing', that the whole of the tribe's lands were to be taken and then 'a portion handed back to them'. He said that there had been considerable dissatisfaction over the taking of the 50,000 acres between the Waimapu and Wairoa Rivers, 'as many natives who had taken part in the rebellion would have been heavily punished, while others, equally involved, would escape punishment altogether'. Smith said that the petitioners he represented were 'loyal members of the tribe' and thus 'entitled to their ancestral rights in the [confiscated] land'. He acknowledged that, in assessing any compensation due to them, it would be necessary to take into account any lands that they had received. Smith also touched on the Te Puna–Katikati purchase, which he said had bought 'very valuable lands' at only three shillings an acre when speculators were offering £4 an acre. The transaction was consequently 'not fair and equitable'.[16] After an adjournment to allow him more time to

15. Native Land Claims Commission files, MA85/8 (RDB, vol 50, pp 19,293–19,299)

16. 'Confiscated Native Land Commission – Hearing of Tauranga Claims', *Bay of Plenty Times*, 1 April 1927, MA1 5/13/- (RDB, vol 56, p 21,273)

gather evidence, Smith made statements to the effect that 'loyalists' were entitled to their rights in the 50,000-acre confiscated block, or their equivalent elsewhere, and that the Native Land Court should ascertain 'what natives were interested in the 50,000 acres'. He said that the Government should pay an additional price for land that it had purchased from Tauranga Maori – presumably, he meant the Te Puna–Katikati blocks.[17]

In his concluding remarks, Smith argued that the 'cession of the 50,000 acres could hardly be regarded as voluntary'; that it was 'unjust to take land from rebels and loyalists alike'; and that the remaining land should have been 'treated as belonging to those who had ancestral rights in it'.[18] He also asserted that the Government was 'not entitled to take more [land] than was necessary for Military Settlement'.[19] This reference to the requirements of the New Zealand Settlements Act 1863, to which we have drawn attention in chapter 6, seems to have escaped the notice of the Sim commission.

Taylor, for the Crown, submitted that 'the lands in the Tauranga district were in a different position to the confiscation in other districts, owing to the session [*sic*] of lands to the Government and the participation of the Ngaiterangi in the rebellion in the Waikato and in this district'. He said that it had been admitted that there were 'sufficient acts of rebellion to justify the Crown in confiscating some of the lands of the tribe'. Although a formal proclamation was made under the New Zealand Settlements Act, there was, Taylor contended, 'no real confiscation in this district at all', since Ngaiterangi had 'voluntarily offered their lands to the Crown'. In purchasing the Te Puna–Katikati blocks, 'the Government was doing something that the natives themselves desired', because they wanted the protection provided by European settlers against 'their enemies at the Thames and in the Waikato'.[20]

Taylor then argued that, because of difficulty in reconciling the interests of the various groups in the 50,000-acre block, 'the natives replied that they preferred the Government to take the whole of the land and in some way hand back to them three-fourths of it'. The total area taken turned out to be 290,000 acres, but only 50,000 acres were confiscated and 240,250 acres were returned (including the 93,188 acres purchased as the Te Puna–Katikati blocks). Taylor noted that some difficulties arose over the proclamation of the confiscation but that the proclamation was subsequently validated by the Tauranga District Lands Act 1867. Under that Act, the commissioners arranged for the return of the remaining land, and a final settlement was organised by Brabant in 1886. That, according to Taylor, 'apparently satisfied them at the time because there were no complaints until many years afterwards'. Taylor concluded by submitting that 'the Tauranga district had always been considered as one in which any differences between the Maoris and the Government were settled in a very generous spirit on

17. Native Land Claims Commission files, MA85/8 (RDB, vol 50, p 19,294)

18. 'Confiscated Native Land Commission – Question of Treatment of Loyal Natives', *Bay of Plenty Times*, 2 April 1927, MA1 5/13/- (RDB, vol 56, p 21,272)

19. Native Land Claims Commission files, MA85/8 (RDB, vol 50, p 19,297)

20. 'Confiscated Native Land Commission – Question of Treatment of Loyal Natives', *Bay of Plenty Times*, 2 April 1927, MA1 5/13/- (RDB, vol 56, p 21,272)

both sides'. He said that Tauranga Maori had no valid claims against the Crown with respect to the confiscated lands, adding that the three shillings and fivepence an acre paid for the Te Puna–Katikati blocks would have been a fair price.[21]

Taylor's confident submission was well-supported by maps and documents provided by O A Darby of the Auckland Lands and Deeds Office. Taylor was backed by the resources of the Crown Law Office, the Native Department, and the Department of Lands and Survey, and several of their staff assisted in researching the Crown's case. In contrast, Smith appears to have had only one assistant to help him prepare for the hearings.[22] It is perhaps not surprising that, so far as the Tauranga confiscation was concerned, Taylor made more of an impression on the commission.

12.3.3 The Sim commission's report

The Sim commission's report devoted some five pages to Taranaki and six to the Waikato, but only two to Tauranga (and another half page to Waitaha's petition). The Waitaha claim was quickly dismissed, partly because Wihapi, in presenting it to the commission, enlarged the claim from the 22,300 acres claimed in his 1923 petition to 290,000 acres – the whole of the confiscation district. In justifying the dismissal of the petition, the commission also assumed that Waitaha had been silent on their claim from 1865 until 1923.

In its general discussion of the Tauranga confiscation, the commission displayed no more sympathy for the other claimants than it had shown for Waitaha. The main events relating to the war, the surrender of Ngai Te Rangi, and the confiscation were briefly recited. Grey's reply to Ngai Te Rangi at the pacification hui was described simply by quoting from Clarke's letter to Mantell of 23 June 1865, which said that that Grey had promised to 'return to them three-fourths of their land, retaining the remainder as a punishment for their rebellion. The Natives all expressed satisfaction at the liberality of the Governor.' The commission's report then noted the confiscation under the proclamation of 18 May 1865 and how, when doubts were raised as to its legality, it was validated by the Tauranga District Lands Act 1867. It concluded with a brief comment on how the land was returned and specified the area finally confiscated as compared with the areas purchased at Te Puna–Katikati and returned.[23] The commission's narrative of events and concluding figures on the various categories of land closely followed Taylor's submission, although this was not admitted.

Before commenting on Smith's submissions, the commission asserted that it was 'clear that the Tauranga Natives were engaged in rebellion against Her Majesty's authority after the 1st January, 1863, and their case came, therefore, within the terms of the New Zealand

21. Ibid
22. Document A22, p 119
23. 'Report of Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Maoris', 29 June 1927, AJHR, 1928, G-7, pp 18–19

Settlements Act, 1863'. This, the commission continued, 'was admitted by the Natives at the meeting with the Governor on the 5th and 6th August, 1864', where 'they really agreed then with the Governor as to the total area to be confiscated as a penalty for their rebellion'.[24]

Turning to Smith's submission, the commission asserted that 'Mr Smith did not contend seriously that confiscation was not justified, or that in the circumstances the area finally confiscated was excessive'. He had merely said that 'loyal natives' with ancestral rights in the confiscated block were entitled to those rights, or their equivalent, and that 'loyalists' and 'rebels' were entitled to their full shares in the returned land. Smith had asked for a Native Land Court inquiry into both matters. However, the commission stated that no such inquiry could be recommended unless a prima facie case for injustice was established and, if one was, then 'the facts could be ascertained and the sufferers compensated'. According to the commission, Smith had not attempted to prove such a case for any of the arrangements and settlements in connection with the confiscated land; instead, he had merely tried to suggest that Te Puna–Katikati had been purchased at 'under-value'. Any such inquiry, the commission's report continued, would face the impossible task both of ascertaining 'who of the Natives concerned were loyal' and of examining all the arrangements and settlements to ascertain what 'each Native, whether loyalist or rebel, obtained in the shape of land or money'.[25] The commission summarised what had already been done, largely by reference to reports of various Tauranga district land commissioners, and concluded that:

> the claims of both loyal Natives and rebels were duly considered at the time, and an endeavour made to do justice to them all . . . it is reasonable to conclude that substantial justice was done to the Natives by the settlements made by the Government. We think, therefore, that the confiscation was justified and was not excessive, and that the Natives have not made out any case for the inquiry asked for by them.[26]

Finally, the commission dealt with the various Tauranga petitions. The commission's findings were as follows:

- Petition 22 from the Ngati Makamaka tribe said that, though they were descendants of 'loyalists', their land was confiscated and they were left landless. They asked for 1050 acres of Crown land in the parish of Apata. The commission said that Ngati Makamaka did not offer any evidence that they were landless and, moreover, their petition raised the general question of whether the Government should provide land for landless Maori. Since that question was outside the scope of its inquiry, the commission made no recommendation.

24. 'Report of Royal Commission to Inquire into Confiscations of Native Lands and Other Grievances Alleged by Maoris', 29 June 1927, AJHR, 1928, G-7, p 19

25. Ibid

26. 'Confiscated Native Lands and other Grievances', AJHR, 1927, G-7, p 20

- Petition 23 from Ngai Tamarawaho said that their land was included in the Tauranga confiscation and, apart from an area of about 100 acres returned to them, they were left landless. They, too, asked for a grant of land. The commission said that its remarks in respect of petition 22 applied also to this petition. It added that a 'search-paper' showed that three other blocks of land – of 600 acres, 59 acres, and 41 acres – were owned by 111, 61, and 112 members of the hapu respectively.[27]
- Petition 24 from Nepia Kohu and 628 others was dismissed on the ground that it was 'covered by what has already been said on that subject'.

12.3.4 Summary

We will make Treaty findings on the report of the Sim commission after considering claimant submissions (see secs 12.8, 12.9). But we make some concluding remarks here, since, for 50 years, successive governments refused to countenance Tauranga Maori complaints about the raupatu because of the commission's findings.

Although the Sim commission's inquiry into the confiscations was the most comprehensive to that date, and made use of much available documentation and existing historical accounts, it did not have the wealth of material that became available to researchers in the years after the Second World War. We noted that, in the case of Tauranga, the hearing was truncated and that claimant counsel was handicapped by a lack of time, assistance, and documentation, although Crown counsel was well served. In our view, the commission's report was unduly reliant on Crown counsel's analysis and his uncritical use of selected official papers. The commission too easily accepted the notion that Tauranga Maori were in rebellion and agreed that they deservedly had some of their land confiscated. It found that the Crown had dealt fairly with Tauranga Maori and in accordance with their own wishes. As we have pointed out in chapters 5, 6, and 7, we do not consider this version to be historically accurate. Although the Ngati Ranginui petitions were discussed and dismissed, as noted above, the commission failed to address one of the petitioners' central points, elaborated on in the hearing by their witnesses: that they were Ngati Ranginui and not Ngai Te Rangi and had been disadvantaged by the Crown's dealing with 'Ngaiterangi' alone over the confiscated block and the whole confiscation district.

But, having made those comments, we accept that the commission's findings were not unreasonable in light of the evidence and arguments presented to it. Taylor made a cogent case, based on long-standing attitudes to the Tauranga war and confiscation. Smith lacked the time and resources to prepare a convincing alternative case and ended by making an indecisive submission that lacked the evidence to support the few tentative suggestions that he did put forward. As a result, these were easily knocked back by the commission, which was

27. AJHR, 1927, G-7, pp 29–30

in any case apparently desperate to complete its report in the time available. Having dealt relatively severely with the Crown's case over the Taranaki confiscation, and to a lesser extent with its argument over the Waikato raupatu, the commission may have been content to let the Crown off the hook over Tauranga. After all, it was widely accepted that 'Ngaiterangi' had been generously dealt with, having had three-quarters of their land returned to them. The Sim commission's apparently authoritative support for this notion meant that it endured without question for nearly 50 years.

12.4 Aftermath of the Sim Commission

Although the Sim commission's report was completed on 29 June 1927, it was not presented to Parliament until 28 September 1928. Coates had asked the four Maori members of Parliament for recommendations on the report. They responded on 10 September 1928 by asking the Government to raise the annual payment recommended by the commission from £8600 (£5000 for Taranaki, £3000 for Waikato, and £300 each for Whakatohea and some Wairoa Maori of Hawke's Bay) to £12,500. The latter sum included £2600 for the Bay of Plenty tribes, of which £1000 was to be for Tauranga tribes and £150 for Waitaha. In justification, they said:

> We do not think that the Commission has given adequate consideration to the position of the Bay of Plenty tribes under the confiscations which deprived them of so much of their lands. A factor to be considered is that the source of the disquiet and rebellion was in the grievances which led to the wars in Taranaki and Waikato.[28]

Coates was sympathetic and provided for additional payments under section 20 of the Native Land Amendment and Native Land Claims Adjustment Act 1928. This allowed the commission's recommendations to be 'modified, varied, or extended' as 'may be deemed just or expedient', although no payments were to be made until approved by Parliament.[29]

As it turned out, it was not Coates but Ngata who had the opportunity to implement section 20. Coates's Reform Government lost the 1928 election, and Ngata was appointed Native Minister in the incoming United Government headed by Sir Joseph Ward. Early in 1929, Ngata began negotiations with the different raupatu claimants based on the higher sums he and his fellow members of Parliament had recommended. Ngata reached an agreement with Taranaki in 1930 for an annual payment of £5000. Negotiations with Waikato bogged down, owing to Waikato's insistence that they receive the same amount as Taranaki. This point was not conceded by the Crown until 1948. In the meantime, negotiations with others, including Tauranga Maori, were put to one side as Ngata concentrated on his land

28. Ngata, Pomare, Uru, and Henare to Coates, 10 September 1928, MA1 5/13/- (RDB, vol 57, p 21,672)
29. Coates to House, September 1928 (doc A22, pp 130–131)

development schemes. These required increasing amounts of cash at a time when the Government, hit by the worldwide Depression, was cutting expenditure to the bone.

Ngata resigned from Cabinet in 1934, but he remained an important advocate for raupatu claimants. In September 1935, he led a deputation of Tauranga, Opotiki, and Wairoa Maori to see Coates, who was then the Finance Minister. Ngata told Coates that he did not think that Smith, counsel for the claimants, 'was so well briefed in regard to the Bay of Plenty case as he was with Taranaki and Waikato'. Ngata then suggested that those who were not covered by the commission's recommendations (including Tauranga Maori) should be 'afforded an opportunity later to establish a case'. Coates accepted that further inquiry might be required in the case of the Tauranga claims, but once again he lost the opportunity to promote the matter when his government was defeated, this time by the Labour Party, at the general election in December 1935.[30]

So far, there seemed no reason for Tauranga Maori to protest at the Sim commission's failure to support their claim. The Reform and United Governments were apparently sympathetic to the payment of £1000 per annum to Tauranga Maori, as had originally been suggested by the four Maori members. Hopes were further raised in August 1936 when Michael Joseph Savage, Prime Minister and Native Minister in the Labour Government, suggested a another inquiry. Savage appeared to confirm this at a hui with Waikato at Ngaruawahia in March 1937 that was attended by George Hall and a Ngati Ranginui delegation. Hall had assumed that the 'new tribunal' that Savage had proposed to consider the Tainui claims would also hear the Ngati Ranginui claim, making it 'possible for our people to be heard as Ngati Ranginui, as distinct from, and not under the domination of Ngaiterangi'.[31] These hopes were dashed a year later. Hall was simply told that the Government was committed to negotiating a settlement with Waikato, according to the Sim commission's report, but that the commission had made no recommendation on Tauranga, and in fact 'went as far as to say that the confiscation was justified and was not excessive'.[32]

Despite this setback, the notion of a further inquiry into the Tauranga raupatu and other Maori claims was not entirely dead. The Tauranga claims were listed, 'with a view to their final settlement', in a memorandum prepared by the under-secretary of the Native Department in January 1938, along with many other long-standing claims and grievances.[33] However, the war delayed matters, and when the inquiry was finally set up in 1946, it was restricted to looking only at surplus land the Crown had retained from nineteenth-century purchases. At the same time, the Government continued negotiations for the settlement of other major land claims, and in 1948 it finally 'settled' the Waikato raupatu claim. Meanwhile, the Tauranga claims were

30. Notes of meeting in office of Minister of Finance with deputation of interested Maori introduced by Sir Apirana Ngata, 23 September 1935, MA1 5/13/- (RDB, vol 57, pp 21,622–21,624)

31. Hall to Savage, 23 August 1937, AAMK869/1588B (RDB, vol 138, pp 52,963–52,964)

32. Langstone to Hall, 24 August 1937, AAMK869/1588B (RDB, vol 138, p 52,960–52,961)

33. 'Memo for the Active Minister', 25 January 1938, MA1 5/13/- (RDB, vol 56, p 21,331)

left in limbo – always on the assumption that the Sim commission had considered and dismissed them. In 1944, Tauranga Maori began to petition Parliament anew for a settlement of their claims. In that year, nine petitions relating to the raupatu were submitted: seven by Ngati Ranginui, and one each by Waitaha and Ngati Hinerangi.[34] Once again, the various Ngati Ranginui petitions were submitted or inspired by Hall, and most of them repeated details from the petitions of the early 1920s. Waitaha's petition differed in its details from their 1923 petition, although it continued their complaint both against the confiscation of Waitaha land by the proclamation of 18 May 1865 and the Tauranga District Lands Act 1868 and the designation of that land as 'Ngaiterangi' land.[35] The Ngati Hinerangi petition was lodged by James Douglas, who had given evidence to the Sim commission. His 1944 petition concerned the sale of 20,000 acres of the Te Puna–Katikati blocks, located at Aongatete, by those who were allegedly not the rightful owners.[36]

The 1944 petitions were but a foretaste of things to come. With the end of the war in 1945 came a fresh wave of petitions and appeals to Ministers. Hall again led the way with a new petition on behalf of Ngati Ranginui. This cited their contribution to the war and asked for the appointment of 'a competent and impartial tribunal' to hear their claims. In 1946, further requests were made for action on the grievances of Tauranga tribes, this time including one from Ngai Te Rangi. When Prime Minister Peter Fraser visited Judea Pa in November 1946, he was asked to direct the Surplus Lands Commission (under the chairmanship of Sir Michael Myers) to consider the grievances of the Tauranga tribes. But the Government decided that the commission already had enough to consider, and it also stated, on the advice of the Native Department, that the Sim commission had found that there were no grounds to reinvestigate the Tauranga claims.[37]

Hall was undeterred – he lodged another petition in 1948. This time, the newly named Department of Maori Affairs made a more detailed examination of the Tauranga claims before advising the Minister how to respond. The department found and advised the Minister of Civil Commissioner Smith's return of 11 February 1864, which listed the number of adult males from the various kainga around Tauranga who had joined 'insurgents in Waikato'. They included 117 men from what were said to be the Ngati Ranginui kainga of Judea, Bethlehem, Otumoetai, and Hairini. This information, the under-secretary argued, put 'a very different complexion' on Ngati Ranginui's claim, constantly reiterated in petitions, that the tribe 'took no part in the fight' at Pukehinahina. The under-secretary was forced to admit that there was 'little evidence of the part played by Ngati Ranginui in the fighting at Tauranga', but he concluded that:

34. Copies of the petitions are in the *Raupatu Document Bank*, vol 138, pp 52,899–52,956.
35. Petition 101/1944, MA1 5/13/- (RDB, vol 138, pp 52,927–52,928)
36. A copy of petition 108/1944 is reprinted in the *Raupatu Document Bank*, vol 138, p 52,901.
37. Document A22, pp 139–140

> the Ngati Ranginui people can hardly . . . say that the confiscations of land in their territory were any less just than those suffered by the Ngai te Rangi and other tribes and I am unable to recommend that any further action should be taken in respect of their petition.[38]

The Minister may not have been satisfied with this answer, since he asked for further advice as to whether the Tauranga petitions should be submitted to a royal commission for inquiry. We have not found a full reply to this request, although notes prepared in the department indicate that the case against an inquiry was further developed, though it still proceeded from the assumption that the Sim commission had done a thorough job and no new inquiry was needed.[39]

The ever-persistent George Hall tried another tack: meeting with the Prime Minister himself. Before the meeting, Fraser was primed by the Maori Affairs under-secretary, Tipi Ropiha, with information collected from the Sim commission's inquiry. Ropiha advised Fraser that the Tauranga claims had been fully dealt with by the commission and that, in his opinion, no further inquiry was necessary.[40] Forearmed with this information, Fraser was able to fend off Hall when they met in Auckland on 9 July 1949, telling him that the Sim commission had already dealt 'very fully with the matter' and that he had produced no evidence to establish his claim. Fraser added that 'all the information' showed that Ngati Ranginui and Ngai Te Rangi were so intermixed that it would be very difficult to sort them out, and that 'all the people round about Tauranga were known as Ngaiterangi'. In response to Hall's repeated requests for an 'impartial tribunal' to investigate their petition, Fraser replied that he would ask Ropiha 'to go into the matter'. However, Ropiha believed that he had already investigated the claims thoroughly, and Hall had to be content with asking for a block of land for returned Ngati Ranginui servicemen.[41]

Hall continued to press for an inquiry into the Ngati Ranginui claims for another decade. He was repeatedly rebuffed. On the 'several subsequent occasions' that he represented the matter to Ernest Corbett, the Minister of Maori Affairs for the National Government, Hall was told that Corbett had looked into it 'very fully'.[42] And in a virtual rerun of his meeting with Fraser in 1949, Hall met Labour Prime Minister Walter Nash on 17 February 1959 and was again given a promise that the matter would be looked into. When, on 24 March, Hall asked Nash whether there had been any progress on the inquiry, the department merely recommended that Hall be reminded of Fraser's statement that the Sim commission 'had dealt very fully with the matter of the Tauranga confiscation'.[43] This is Hall's last mention in

38. Memorandum for Minister of Maori Affairs, 9 November 1948, AAMK869/207A (RDB, vol 138, p 53,264)
39. Tutahi to Prime Minister, 19 August 1946, AAMK869/207A (RDB, vol 138, p 53,287)
40. T P Rophia, 'Under Secretary's Memo for the Prime Minister', 1 July 1949, AAMK869/207A (RDB, vol 138, p 53,246)
41. Notes of representations made to Minister of Maori Affairs, 9 July 1949, AAMK869/2079 (RDB, vol 138, p 53,240)
42. Hall to Nash, 8 May 1959, AAMK869/2079 (RDB, vol 138, p 53,157)
43. Minister of Maori Affairs to Hall, 8 May 1959, AAMK869/207A (RDB, vol 138, p 53,157)

the record – there is no further correspondence from him – and, given that successive departmental attempts to silence him had been unsuccessful, we can but conclude that only death was able to silence the man who had battled for Ngati Ranginui claims for more than 50 years. It was left to others of Ngati Ranginui, such as Hare Piahana and Maharaia Winiata, to continue pressing Ngati Ranginui's claim.

Claimant evidence in this inquiry from Ngati Ranginui hapu frequently referred to the protests and petitions we have discussed above. Continued attempts to present their case to the Government became a point of solidarity amongst the people of the iwi, as well as a way to keep the separate identity of Ngati Ranginui alive.[44] Several witnesses referred to an informal taxation system amongst the whanau of Ngati Ranginui that raised money to cover the costs involved in presenting petitions and making other protests.[45] Witnesses also remembered the contributions of Hall, Winiata, Piahana, and others in keeping the raupatu protests alive.[46] One particularly poignant episode was related to us by Ngai Tamarawaho witnesses. Before the Second World War, Winiata and Nepia Kohu managed to raise sufficient funds to travel to Wellington and present the Ngati Ranginui case to the Government. After being received by officials and 'going through the mihi as tikanga required', Winiata and Nepia were told that their allotted time was up; they were asked to leave before they had had a chance to present their case.[47]

12.5 The Quest for a Tauranga Moana Raupatu Settlement, 1960–81

12.5.1 Pan-tribal attempts to gain redress

Until the end of the 1950s, Ngati Ranginui were largely alone in seeking compensation for the raupatu, although some other groups such as Waitaha continued to present their own claims. But, from about 1960, the other iwi of Tauranga joined Ngati Ranginui in efforts to seek redress. Around this time, legislation was passed that provided for new Maori institutions which could be used to promote Maori claims. In 1959, some tribal executives had been formed on an experimental basis, and under the Maori Welfare Act 1962, they were integrated into an elaborate pyramidal structure: a base of local Maori committees elected tribal executives and then district councils, while at the top sat the New Zealand Maori Council.[48] Tauranga Maori were quick to take advantage of the new institutions. In September 1961, before the Maori Welfare Act had formalised the new structure, they formed the Tauranga Tribal Executive Committee from the Ngai Te Rangi, Ngati Ranginui, Matakana, and Katikati Maori committees.

44. Document F17, p 12; doc F20, p 13
45. Document F16, pp 6–7; doc F23, p 4
46. Document F15, p 13; doc F16 p 6
47. Document F18, p 13; doc F19, p 3; doc F23, p 4
48. Graham V Butterworth and Hepora R Young, *Maori Affairs* (Wellington: Iwi Transition Agency, 1990), p 103

A deputation from the Tauranga tribal executive, including Karehana Gardiner of Ngai Te Rangi and Hare Piahana of Ngati Ranginui, met the Prime Minister and Minister of Maori Affairs, Walter Nash, in September 1960. Gardiner told Nash that he could not see why Waikato, who went to help Taranaki, should have received more favourable treatment than Tauranga iwi that had helped Waikato when their territory was invaded. He also claimed that in Tauranga the Government had purchased land from people who were not the true owners. Nash gave them the standard reply: he would refer the matter to his department to see if anything could be done.[49] The Department of Maori Affairs gave Nash the same documents noted above, going back to Ropiha's report to Fraser of 9 November 1948. Nash replied to Gardiner accordingly.[50]

In 1961, the Tauranga tribal executive decided to present 'a pan-iwi raupatu claim' to the Government.[51] Leadership was now being assumed by younger men, such as Wiremu Ohia of Ngati Pukenga and Turi Te Kani of Ngai Te Rangi, who promoted a Tauranga-wide perspective on the raupatu rather than one of individual iwi or hapu. In June 1962, the tribal executive approached the Department of Maori Affairs for assistance to research the Tauranga confiscation.[52] They received a reply to the effect that the Sim commission had fully considered the matter and that the Government did not intend to take it any further.[53] Undeterred, the tribal executive decided to pursue its research into the raupatu and requested a copy of the Sim commission's report from the department.[54]

Centenary commemorations of the New Zealand wars, including the battles of Pukehinahina and Te Ranga, were held in 1964. In response to pronouncements on the unity of the races at these events, the Tauranga tribal executive again asserted their claim. As Ohia wrote:

> mere words cannot displace the feeling of injustice which still remains in the district from the confiscations and unhappy land sales which followed 1864. Our people is one of the few, maybe the only one which has not been awarded compensation for those confiscations.[55]

Ohia asked for advice on how to proceed with their claim: whether through their member of Parliament or the new Maori Council. Jock McEwen, the Secretary for Maori Affairs, advised that the only avenue available to Tauranga Maori was to petition Parliament.[56] Ohia responded one more time, in a long letter of 5 February 1965, written on behalf of the Tauranga tribal executive. He noted that, since 1928, the department's decisions had been

49. Notes of deputation concerning Tauranga confiscated lands, 9 September 1960, AAMK869/207A (RDB, vol 138, p 53,138)
50. Hunn to Nash, 5 October 1960; Nash to Gardiner, 11 October 1960, AAMK869/207A (RDB, vol 138, pp 53,136–53,137)
51. Tauranga tribal executive minute book, 1961–1968, entry for 8 September 1961, pp 1–3 (doc A22, p 145)
52. Ohia to Hunn, 25 June 1962, AAMK869/207A (RDB, vol 138, p 53,134)
53. Secretary for Maori Affairs to Ohia, 16 July 1962, AAMK869/207A (RDB, vol 138, pp 53,132–53,133)
54. Ohia to Controller of Maori Welfare, 12 October 1962, AAMK869/207A (RDB, vol 138, p 53,131)
55. Ohia to McEwen, undated [October 1964], AAMK869/207A (RDB, vol 138, p 53,129)
56. McEwen to Ohia, 10 November 1964, AAMK869/207A (RDB, vol 138, p 53,128)

based on the findings of the Sim commission, yet 'history' had proved these findings to be 'wrongful and unjust'. Ohia noted that, because of the department's stance, Tauranga Maori had been denied the compensation that other tribes were able to use for 'tribal welfare'. Ohia said that the stigma of being labelled as 'rebels' that was carried by Tauranga Maori needed to be removed 'in the light of modern knowledge that they were not "rebels" but that the warfare and consequent confiscations were brought about by the cupidity (and several other attributes) of the Pakeha settlers and Government of the time'. Lastly, Ohia asked for the matter to be discussed with the Minister, Josiah Hanan, at the forthcoming opening of the Ranginui meeting house at Hairini.[57] McEwen replied that there would not be 'any real point' in discussing the matter with Hanan, since it was unlikely that the Government would overturn the opinion of the Sim commission without specific proof that the commission was wrong. He advised that there was no obstacle 'to the people in putting in a petition to Parliament if they want to'.[58]

12.5.2 Tauranga raupatu claims and the third Labour Government

There was no more correspondence between Tauranga Maori and the Government over the issue of compensation for the raupatu until the election of a Labour government, led by Norman Kirk, in 1972. Brown Rewiti, the member of Parliament for Eastern Maori, who was from Ngai Te Ahi of Hairini, began actively liaising between the Tauranga claimants and the Government. When Kirk visited Tauranga in 1973 he undertook to consider any claims brought forward by Tauranga Maori in relation to the confiscation.[59] Around this time, the Tauranga Maori tribal executive engaged the services of Edward Morgan, of the Tauranga legal firm Cooney, Lees and Morgan, as counsel to assist them in their negotiations with the Government. Morgan continued to act as counsel for the committee until after the 1981 'settlement', becoming in that time a gifted and dedicated advocate for his clients' cause. The committee also used professional scholars, such as Evelyn Stokes, who would later write *A History of Tauranga County* and present evidence to this Tribunal, to research their raupatu claim.

On 23 April 1975, Rewiti took a deputation of Tauranga Maori leaders to put the Tauranga raupatu claim to Prime Minister Bill Rowling. The delegation included Ohia, Te Kani, and Morgan, all of whom made verbal submissions, and Pei Te Hurinui Jones, the distinguished Tainui historian, who lent Tainui support for the Tauranga cause.[60] Morgan had taken the precaution of sending the Prime Minister a longer background submission that carefully set out some of the documentation overlooked by the Sim commission, as well as new historical

57. Ohia to McEwen, 5 February 1965, AAMK869/207A (RDB, vol 138, pp 53,126–53,127)
58. McEwen to Ohia, 24 February 1965, AAMK869/207A (RDB, vol 138, p 53,125)
59. 'Battle to Save Land', *Bay of Plenty Times*, 23 April 1975, AAMK869/207A (RDB, vol 138, p 53,094)
60. Ibid

thinking on the wars and the confiscations. According to Morgan, Waikato had been compensated for their confiscated lands, yet Tauranga Maori, who had assisted Waikato in their defence against Crown aggression, had received nothing. Morgan analysed the Tauranga confiscation, making many of the points that have been made in claimant submissions to us and commented on in chapters 5, 6, and 7. He referred briefly to the Sim commission, claiming that its terms of reference were so limited that 'it was unable to deal with the matter properly'.[61] When the Tauranga delegation met Rowling later in April, Morgan summarised his letter in even more cogent terms, appealing to Rowling's sense of fair play and asking why nothing was done for Tauranga Maori when others had been compensated.[62] Morgan's submission was supplemented by those of Ohia and Te Kani, who presented further information from the available documents to add to their case that Tauranga Maori had been unfairly treated when compared with Waikato.[63]

This deputation represented a turning point in the long struggle of Tauranga Maori to reverse the findings of the Sim commission. From this time onwards, documents in the department's files indicate that both politicians and departmental officers began to move away from the findings of the commission towards a settlement of the Tauranga raupatu claims. For instance, a memorandum of 8 May 1975 from E W Williams, the deputy secretary of Maori Affairs, to Matiu Rata, the Minister of Maori Affairs, mentioned 'the possibility of taking steps to remove the feeling of grievance of the Tauranga people whose ancestors were labelled as rebels'. Nevertheless, Williams was concerned that, if Tauranga people who had fought in the Waikato and Tauranga were declared not to have been rebels, other tribes could ask for the same declaration and claim for the total area of their land that was confiscated. In terms of compensation, therefore, Williams wanted to confine payment to the 50,000 acres finally confiscated and not include the Te Puna–Katikati blocks. Williams asked Rata what action the Minister required, though he warned that a Cabinet submission was unlikely to be prepared in time for an announcement by the Prime Minister on 24 May. These remarks suggest that the Government was preparing to make an important shift in principle over the Tauranga confiscation, provided it did not cost too much.[64]

The reference to the Prime Minister's forthcoming announcement was to a speech Rowling was to make at the opening of a dining hall at Whareroa Marae, near Mount Maunganui. At that hui, some 48 years after the Sim commission had dismissed the Tauranga claim, Rowling announced that the Government had accepted the claim in principle. He also announced that the Government was considering setting up a trust board to administer any compensation paid.[65] Rata followed up a few days later by asking Morgan to arrange a small subcommittee

61. Morgan to Rowling, 14 April 1975, AAMK 869/1589A (RDB, vol 139, pp 53,434–53,438)
62. Notes of address by E D Morgan to Prime Minister, undated, AAMK 869/1589A (RDB, vol 139, pp 53,437–53,438)
63. Notes of address by Ngati Pukenga and Ngaiterangi tribes and T R Tekani, to Prime Minister, undated, AAMK 869/1589A (RDB, vol 138, pp 53,097–53,101, 53,102–53,103)
64. Williams to Minister of Maori Affairs, 8 May 1975, AAMK 869/1589A (RDB, vol 138, pp 53,095–53,096)
65. Minster of Maori Affairs to Morgan, 29 May 1975, AAMK 869/207A (doc A22, p 148)

of Tauranga representatives to discuss the proposal to form a trust board.[66] With compensation agreed to in principle, Morgan and his team could now move into negotiations. On 1 June, during a hui at Judea Marae, the Tauranga tribal executive arranged the election of a 10-member 'Tauranga-Moana Trust Board'. The board was merely a temporary body that was to hold office until a settlement was reached with the Government and a permanent board could be constituted by legislation.

At a large hui of Tauranga Maori on 29 June 1975, it was agreed that they would negotiate for a lump sum of $450,000, plus annual payments of $10,000, the same amount that was being paid annually to Taranaki and Waikato. These sums were to cover the 154,809 acres 'finally confiscated', the Te Puna–Katikati blocks purchased for a 'grossly inadequate consideration', and a solatium for 'the long delayed consideration' of the claim.[67] In Wellington on 19 August, a subcommittee of the board comprising Te Kani, Ohia, Morgan, and Gilbert Ormsby met Rata and two other Maori members of the Government, Brown Rewiti and Koro Wetere, to further the negotiations. Morgan, in opening the discussion, 'wondered if some indication could be given . . . of that amount the Government is likely to consider'. But, after Ohia acknowledged that the proposal outlined above had already been declined, Rata turned the question of the quantum back to the board, warning that payments made in the past to trust boards had been based on 'the economic conditions prevailing at the time' and that any payment to Tauranga Maori would be too. The Tauranga board was told they should work out a 'fair sum taking into account the effects of inflation'. They were also advised to opt for a lump sum without annual payments, since that could be invested and its value increased over the years. The delegates realised there was some urgency; as Te Kani indicated, a settlement was needed before the impending election, 'principally because of the more sympathetic attitude shown by the present Government'.[68]

The Wellington delegation reported back to the full board on 24 August. The board accepted the Government's proposal to abandon annual payments in favour of a lump sum and sought the payment of $1 million.[69] On 25 August, Rata formally confirmed that the Government favoured a fixed-sum settlement and that it was agreed that 'we can now proceed on this common basis'. He asked Morgan and his committee how they had arrived at their suggested quantum of $1 million.[70] Morgan provided the requested figures on 8 September. He dropped the claim for compensation for the Crown's purchase of the Te Puna–Katikati blocks at 'under-value' and restricted the board's claim to compensation for the 50,000-acre confiscated block. This land, he stressed, was 'still among the best and most valuable land in the Tauranga district'. Morgan calculated the sum needed to produce interest of $10,000 per annum (Tainui's payment) at $500,000. To that he added a solatium of $450,000

66. Rata to Morgan, 3 June 1975, AAMK869/207A (RDB, vol 138, p 53,088)
67. Ohia, resolution regarding Tauranga confiscation, 29 June 1975, AAMK869/207A (RDB, vol 138, pp 53,063–53,064)
68. Minutes of meeting of 19 August 1975, AAMK869/1589A (RDB, vol 139, pp 53,539–53,540)
69. Morgan to Rata, 28 August 1975, AAMK869/1589A (RDB, vol 139, p 53,541)
70. Rata to Morgan, 25 August 1975, AAMK869/1589A (RDB, vol 139, p 53,535)

for non-settlement of the Tauranga raupatu claim (since 1928). He also asked the Government to bear the costs of settling the claim. Morgan rounded the total sum off at $1 million.[71]

Rata did not accept the board's proposal. Later, in September, he made a recommendation to Cabinet for a settlement of only $160,000, possibly payable over four years. The reduction in the quantum sought was based on the argument that the net area confiscated in Tauranga was 50,000 acres, compared with the 890,000 acres confiscated in the Waikato.[72] In the hectic weeks before the election of 27 November 1975, further negotiation of the Tauranga raupatu claim was postponed. Rata's proposal to pay compensation of $160,000 over four years was put to Cabinet on 28 October and referred to the Cabinet Committee on Policies and Priorities for consideration.[73] That was where the matter rested when the country went into the election.

12.5.3 Tauranga raupatu claims and the Muldoon Government

The National party, led by Robert Muldoon, won the 1975 election, and Duncan McIntyre became the Minister of Maori Affairs. In the new year, Morgan took up the matter of the unsettled Tauranga raupatu claim with the new Minister, who agreed to meet a deputation from the Tauranga trust board in Wellington.[74] McIntyre discovered that Rowling's promise at Whareroa Marae to settle the Tauranga claim and establish a trust board to administer the compensation had not yet been referred to the Treasury or formally placed before Cabinet for final approval. In fact, the Treasury had not commented on the proposed $160,000 settlement at all. McIntyre was soon informed that the Treasury was opposed to a settlement of this size.[75]

For some 14 months, no steps were taken to settle the Tauranga claim, despite repeated requests from Morgan to proceed with the negotiations. Eventually, in April 1977, McIntyre suggested that the claim be presented to Parliament as a petition, because in that way it could be dealt with by way of a parliamentary recommendation to the Government.[76] A joint petition was lodged by Ohia on behalf of the Tauranga Executive of Tribal Committees and the Tauranga trust board. It sought redress for two wrongs committed more than 100 years previous: the forcible confiscation of 50,000 acres and the 'purchase of land at nominal prices from defeated and dispossessed tribes'. The petition also asked that the Maori Affairs

71. Morgan to Rata, 8 September 1975, AAMK869/1589A (RDB, vol 139, pp 53,523–53,524)

72. Rata, draft of memorandum for Cabinet, undated, AAMK869/1589A (RDB, vol 139, pp 53,532–53,534)

73. Secretary of Cabinet to Minister of Maori Affairs, 7 November 1975, AAMK869/1589A (RDB, vol 139, p 53,479)

74. Morgan to McIntyre, 20 January 1976; McIntyre to Morgan, 18 February 1976, AAMK869/1589A (RDB, vol 139, pp 53,472–53,473)

75. Williams, memorandum for Minister of Maori Affairs, 11 February 1976, AAMK869/1589A (RDB, vol 139, pp 53,469–53,470)

76. Morgan to MacIntyre, 8 March 1978; Morgan to MacIntyre, 7 December 1977; MacIntyre to Morgan, 29 September 1976; Morgan to MacIntyre, 3 September 1976; Tauranga confiscation claim, undated; MacIntyre, memorandum for Cabinet, undated (RDB, vol 139, pp 53,416–53,421, 53,447, 53,450–53,454)

Committee of Parliament hear submissions in Tauranga in support of the petition.[77] For the first time in its long history, the committee agreed to hear representations on a petition outside Parliament and on a marae. Under the chairmanship of Ben Couch, soon to become Minister of Maori Affairs, the committee heard the claimants on Hairini Marae on 18 September. The committee was aware of Rowling's public announcement that the Government would proceed to negotiate a settlement, and this was reflected in Couch's opening remarks.[78] He stated that it was 'the intention of Government that this matter should be settled, and the sooner the better . . . Successive governments cannot go on passing the buck.'[79] After the petitioners had made their submissions, Morgan was asked by the Ministry of Maori Affairs to provide details of the amount of compensation sought. He replied a week later, saying that a lump sum of $2 million would be required. This had been calculated on the basis of $10,000 per annum (the sum paid Taranaki and, later, Waikato) since 1930, plus 5 per cent compound interest for that period.[80]

On 9 August 1979, the committee reported favourably on the first of the petitioners' pleas; that is, on the 'forcible confiscation of 50,000 acres of Maori land'. It recommended that, in assessing compensation, the Government should take into account four requirements:

- that the stigma resulting from the branding of the petitioners' ancestors as rebels be removed;
- that any compensation have due regard to the settlements of the Taranaki and Waikato confiscation claims;
- that any compensation paid for the Tauranga claims be 'full and final'; and
- that any compensation paid be 'vested in and administered by the Tauranga Trust Board in accordance with the Maori Trust Board Act 1955'.[81]

The committee's report made no comment on the second of the petitioners' pleas: that land in Tauranga had been purchased 'at nominal prices'. From this time on, negotiations focused only on redress for confiscation. The committee made no recommendation on the amount of compensation to be awarded to Tauranga Maori, other than that the relative quantum of the Taranaki and Waikato settlements should be taken into account.

In January 1980, the Department of Maori Affairs prepared a draft submission to Cabinet suggesting a payment of $201,184. This figure was calculated using a complicated formula based on the size of annual payments to other raupatu tribes, the rate of inflation in the period since the other settlements, relative land values, and the amount of land confiscated in the different areas.[82] The proposal was eventually put into a draft memorandum for Cabinet,

77. The petition (7 August 1978) is reprinted in the *Raupatu Document Bank*, vol 139, pp 53,339–53,341).

78. Williams to clerk, Maori Affairs Committee, 4 September 1978, AAMK 869/1589A (RDB, vol 139, pp 53,391–53,392)

79. 'Maori Land Claim Placed before Select Committee', *New Zealand Herald*, 19 September 1978, AAMK 869/1589A (RDB, vol 139, p 53,384)

80. Morgan to Secretary of Maori Affairs Committee, 25 September 1978, ABGX acc W3706, box 14, vol 3, p 487, NZ-Arch (doc A22, pp 154–155)

81. 'Report of Maori Affairs Committee on Petition 78/21', AAMK 869/1589A (RDB, vol 139, pp 53,337–53,338)

82. Puketapu to Minister of Maori Affairs, 17 January 1980, AAMK 869/1589A (RDB, vol 139, pp 53,322–53,323)

prepared for the Minister of Maori Affairs. The draft stated that the 'claim of the Maori people for some compensation is justified, even taking into account the findings of the Commission of 1928 which was operating on a restricted terms of reference'. It recommended that Cabinet approve compensation amounting to $201,184 as a 'full and final settlement' for the land confiscated at Tauranga and that the designation of 'rebels' not be applied to Maori tribes who had fought against the Government at Pukehinahina and Te Ranga. The draft concluded that, if the amount recommended was not acceptable to the petitioners, the Ministers of Finance and Maori Affairs be given delegated authority to increase it to $250,000.[83]

The Treasury approved the draft memorandum, with some minor modifications, on 18 April. Although it disagreed with the method of calculating the appropriate sum of compensation, it did not quibble over the amount, apart from rounding it off at $200,000 rather than the recommended $201,184. The Treasury also accepted the need for flexibility in the negotiations and discretion to increase the compensation to $250,000. It noted that the Tauranga claim was the last arising from the confiscations in the 1860s and that offering a lump-sum compensation would 'avoid continual approaches for increased annual payments'.[84] On 19 May, approval was given to include a payment of up to $250,000 provided it was accepted as a 'full and final settlement' for the land confiscated at Tauranga.[85]

On 29 May, Couch officially informed the Tauranga representatives of the Government's decision.[86] Having received no sign from the Tauranga claimants that the offer would be accepted, Couch warned them early in July that a decision needed to be made by the end of August if the money were to be paid by the end of the financial year on 31 March 1981. The claimants replied with a counter-offer that consisted of three elements: a request that the settlement not be regarded as full and final in case adjustments were made to the Taranaki and Waikato raupatu payments; the payment of $500,000 compensation, rather than the $2 million recently requested; and the granting of an additional $20,000 for the costs involved in setting up the trust board. Couch supported the first of these requests, and asked for authority to continue to negotiate up to a level of $500,000 in the likely event that the Tauranga claimants would still reject the compensation offer of $250,000. Cabinet, however, would neither raise the level beyond $250,000 nor accept the $20,000 payment for costs, leaving Couch with little scope to negotiate. Meanwhile, legislation had been drafted to formally establish the Tauranga Trust Board.[87]

With the Government unwilling to budge, hopes for a settlement depended on concessions by the claimants. Couch met with the steering committee of the trust board on 13 March 1981 and found that its members were 'divided about accepting the $250,000 offered by the

83. Minister of Maori Affairs, memorandum for Cabinet concerning petition 1978/21, undated, AAMK869/1589A (RDB, vol 139, pp 53,308–53,311)

84. Secretary of Treasury to Minster of Finance, 18 April 1980, AAMK869/1589A (RDB, vol 139, pp 53,304, 53,306)

85. Secretary of the Cabinet to Minister of Maori Affairs, undated [May 1980], MA7/6/168 (doc A22, p 160)

86. Document A22, p 161

87. Minister of Maori Affairs, memorandum for Cabinet, 20 August 1980 (A22, pp 161–163)

Government'. They asked him to take back to the Government a resolution to accept the offer, provided that a properly constituted board was created and that the offer was considered full and final only 'to the same extent as any other settlement concerning confiscated lands'.[88] Tauranga Maori wanted to be assured that, if further raupatu compensation were to be granted to others, they too would get extra. Couch supported this notion, and also the continuing claim for the costs of establishing the board. He stated to the Prime Minister that 'It was apparent these people still have mixed feelings about the grant. All agree it is not enough but, at the same time, most would like to get on with the settlement as soon as possible.'[89] Couch also reported that, in addition to the $250,000 compensation, Tauranga Maori wanted a loan to buy a commercially viable block of land.

Couch later agreed to qualify the full and final settlement statement as the claimants had requested, and it seemed that a settlement was near. The Tauranga board now tried to get Government approval for the loan, specified at $1,750,000, before accepting the compensation offer of $250,000. But, although Couch was sympathetic, he was obliged to reply that a decision on the loan had to be made by the Maori Land Board. He advised the claimants to apply only for a $250,000 loan, since that sum could be repaid from the compensation quantum if that proved to be necessary. According to Vincent O'Malley, the Minister's acceptance of the proposal to raise a loan and his agreement that a qualifying clause be added to the 'full and final settlement' wording of the legislation persuaded Tauranga Maori to accept the Government's offer to settle the raupatu claim.[90]

On 14 August 1981, a draft Tauranga Moana Trust Board Bill, giving effect to the settlement, was introduced into Parliament and referred to the Maori Affairs Committee for consideration. The Government failed to include provision for modifying the phrase 'full and final settlement' to 'the same extent as other Maori trust boards have accepted such payments'. Morgan claimed, in submissions on the Bill before the committee in September 1981, that:

> This clause was the one basis on which the majority obtained enough support to pass a resolution to accept. It was the one concession the Government made in 2 years of negotiation. To the Board's dismay, when the Bill went to Parliament, this clause was unilaterally struck out. Without it, the Trust Board does not accept the offer, and no settlement has been reached.[91]

To make matters worse, in the two years since the Maori Affairs Committee had reported on the Tauranga claim, the value of money had depreciated by one-third. Land values had escalated to the extent that a 10-acre kiwifruit orchard at Tauranga was worth $750,000: three times the compensation offered to Tauranga Maori for the confiscation of 50,000 acres of

88. Couch to Prime Minister, 17 March 1981, vol 3, p 632, Cooney, Lees and Morgan archives (doc A22, pp 164–165)
89. Couch to Morgan, 18 March 1981, vol 3, p 632, Cooney, Lees and Morgan archives (doc A22, p 165)
90. Document A22, p 166–167
91. Submission to the Select Committee on Maori Affairs, ABGX acc W3706, vol 3, pp 509–510 (doc A22, pp 169–170)

their land. The sum of $250,000 was becoming increasingly inadequate. But the Government held firm. The Bill was reported back to Parliament without amendment and, in the face of protests from Maori members in the second reading debate, was passed unaltered.[92]

12.6 The Tauranga Moana Maori Trust Board Act 1981

The preamble to the Tauranga Moana Maori Trust Board Act 1981 stated that it had been agreed 'by and between the Crown and representatives of the descendants of the Battles of Gate Pa and Te Ranga whose land had been confiscated, that the Crown should pay in compensation $250,000'. The payment was to be 'full and final settlement of all claims of whatever nature arising out of the confiscation or other acquisition of any of the said lands by the Crown'. This statement was repeated in section 6(4) of the Act, which added that the land involved was described in the schedule to the Act. This schedule was copied from the schedule to the Tauranga District Lands Act 1868, although it wrongly described the district as containing some 214,000 acres (86,603 ha), rather than the 290,000 acres (116,000 ha) actually included in the schedule to the 1868 Act.[93]

We make two observations on the schedule and section 6. The first is that, while it may have been technically correct to say that representatives of the descendants of those whose land had been confiscated had agreed to the compensation settlement, it is evident from our discussion above that they had agreed only under protest. We comment on the Treaty significance of this below. The second point relates to the extent of the compensation. As we have noted above, the negotiations that led to the 1981 settlement concerned only redress for the confiscation of the 50,000-acre block. The petition brought by Tauranga Maori in 1977 included a claim that the Te Puna–Katikati purchase was unfair, but the Maori Affairs Committee did not report on this aspect of the petition, nor on any other Crown acquisitions, and the final negotiations were restricted to the claim relating to the 50,000-acre confiscated block. However, the Act stated that the $250,000 paid in 'full and final settlement' applied not merely to the 50,000 acres acquired by confiscation but to any other acquisition of land by the Crown in the entire confiscation district described in the schedule. This had the effect of ruling out any future compensation arising from actions of the Crown in acquiring any land at Tauranga, whether by confiscation or other means.[94]

Other provisions of the 1981 Act were mainly concerned with the establishment of the Tauranga Moana Maori Trust Board. Section 4 provided for the establishment of the board under the Maori Trust Boards Act 1955. The beneficiaries were described as 'the descendants of those who took up arms against the Crown at the Battles of Gate Pa and Te Ranga or which

92. Document A22, p 173
93. Ibid, pp 174–175
94. Ibid, p 175

were dispossessed of any lands as a direct result of those battles'. The final part of that section was presumably intended to allow for descendants of those who did not fight against the Crown but who also lost land. In any case, it was not going to be easy 117 years later to find the descendants in either category. Section 5(1) of the Act provided for an initial board of up to 10 members to be appointed by the Governor-General on the recommendation of the Minister of Maori Affairs. Once a list of adult beneficiaries had been prepared, an election of board members was to be held.[95] Section 7 declared that:

> the character and reputation of Rawiri Puhirake, Henare Taratoa, and all other members of the Ngaiterangi, Ngati Ranginui, and other tribes who fought in the Battles of Gate Pa and Te Ranga shall be the same as if a full pardon had been granted to them in respect of all matters arising out of, or in any way related to, those battles.

This carefully worded statement did not go so far as the claimants had wanted: it did not acknowledge that their ancestors had not been rebels.

12.7 The Failure of the 1981 Arrangements

Although a board of 10 was soon appointed under the Act (and increased to 15 by an amendment to the Act in 1988), there was a considerable delay in compiling a roll of beneficiaries. This onerous task was undertaken by Professor Stokes. As she noted in her 1990 report, the 1981 Act provided little guidance, other than directing the board to prepare 'a roll containing the names and addresses of all adult beneficiaries'. The Maori Trust Boards Act 1955 was no more helpful. The onus was on beneficiaries to enrol, although the board could determine whether particular applicants were entitled to enrol. Stokes found that the definition of beneficiaries in the 1981 Act – 'the descendants of those who took up arms against the Crown at the Battles of Gate Pa and Te Ranga or which were dispossessed of any lands as a direct result of those battles' – was difficult to interpret.[96]

In 1982, Stokes began to prepare the roll. She discussed it with the board and at hui on many occasions and presented a first draft report to the board in 1984, when general principles for the compilation of the roll were agreed. In October 1986, a report and draft roll were presented to a board hui at Hairini Marae. The roll was then publicly notified and copies made available for consultation at the board office, the Department of Maori Affairs, and the Tauranga Moana Community Centre. Members of Ngai Tamarawaho expressed some dissatisfaction with the constitution of the board and the draft roll in late 1987, but the board declined to change the basis for compiling the roll.

95. Document A22, pp 174–176
96. Document A2, pp 213–214

While working to identify the beneficiaries, Stokes found that there was no list of those who took up arms against the Crown in Tauranga (and in any case those who did so included some who were not from Tauranga). She decided that those dispossessed of land in Tauranga as a result of the battles, as specified in the 1981 Act, included all who had traditional or customary rights in the land in the confiscation district, since the confiscation under the New Zealand Settlements Act 1863 destroyed their customary titles. To compile a list of those people, Stokes worked through the records of the commissioners of Tauranga lands, the Native Land Court, the Land Registry, and the Department of Lands and Survey. However, for various reasons she decided to exclude some people. For instance, the Marutuahu (Hauraki) tribes were excluded on the ground that their claims were extinguished by the Crown's 1866 payments for rights in the Te Puna–Katikati blocks.[97] In any case, the roll of beneficiaries was never used as the basis for electing the members of the Tauranga Moana Maori Trust Board, as originally intended. It was eventually decided that each of the Tauranga marae would elect members to the board as they saw fit, without necessarily referring to the draft roll.

In view of the high level of dissatisfaction with the 1981 arrangements, it is not surprising that Tauranga Maori took every opportunity to renew claims for further compensation. The change of government in 1984 and the amendment to the Treaty of Waitangi Act in 1985 appeared to provide opportunities to overthrow the 1981 'settlement'. In November 1985, Morgan took up the case on behalf of the Tauranga Moana Maori Trust Board with Koro Wetere, then the Minister of Maori Affairs in the fourth Labour Government. He reminded Wetere that:

> Members of the deputation who negotiated the compensation with the Crown were very strongly of the opinion that the amount offered was minute in comparison with the loss to the people who suffered confiscation, but they had the option of either accepting that amount or nothing.
>
> We think you are aware that the limit was imposed at that time by the Prime Minister of the day, who had made up his mind on the figure to be offered as a maximum.[98]

As Morgan argued, the $250,000 compensation had been inadequate from the start, not merely because of the low value put on the land taken but also because there were some 10,000 beneficiaries to provide for. Had the sum been paid out, the beneficiaries would have received a mere $25 each. Instead, the board had decided to invest the compensation in horticulture – as part-payment for an as-yet unproductive kiwifruit orchard at Opureora on Matakana Island. This purchase had been under negotiation when the compensation agreement was reached in 1981 but required a large additional mortgage. The deal was already going sour

97. Ibid, pp 218–220
98. Morgan to Wetere, 22 November 1985, vol 3, p 640, Cooney, Lees and Morgan archives (doc A22, p 176)

when Morgan wrote to Wetere, so he asked the Minister if, instead of making an additional cash compensation payment, the Government could simply pay the board's existing mortgage liability on the orchard. Wetere, however, was beset by pleas for increased compensation from other claimants, and stalled on the Tauranga board's request.[99]

In June 1987, board members met with Wetere in Wellington. As a result of that meeting, Morgan set out the bases on which their claim to further compensation rested. He recalled how the board had justified its claim for $2 million when the unimproved value of the land had been some $96 million. The $2 million was necessary, Morgan said, to create a viable trust fund for the 10,000 to 12,000 beneficiaries, but they had received only one-eighth of that: 'just enough,' he said, 'to get us into trouble'. He pointed out that the agreed proviso of a full and final settlement 'to the same extent as any other Board' had been omitted from the 1981 Act and that the legislation had applied the compensation not merely to the confiscated block but to all Crown acquisitions in the entire district.

The board then sought money to cover its existing debts of over $1 million, plus another $454,000 to complete the development of the Opureora orchard and $500,000 to enable it to undertake other functions.[100] In effect, the $2 million claim had been revived. According to O'Malley, little further progress had been made with this claim when he wrote his report in June 1995.[101]

The board was also in trouble on another front. In 1987, Ngai Tamarawaho decided to withdraw from the board, since, as a minority, they were usually out-voted – but also, as their runanga chairman said, to demonstrate their opposition to the 1981 Act and the principles on which the board was founded.[102] Ngai Tamarawaho claimant witness Desmond Tata explained, from the perspective of his hapu, how they arrived at the decision to leave the trust board. After a dispute over the proposed redevelopment of the Tauranga Town Hall, Ngai Tamarawaho sought an injunction from the High Court to halt the proposal on the basis that the land was subject to a Waitangi Tribunal claim. In his oral judgment, Justice Noel Anderson stated that the Tauranga Moana Maori Trust Board Act could be a legal bar to pursuing a claim to the town hall site. According to Mr Tata, Ngai Tamarawaho immediately decided to withdraw from the board in protest both at the restrictions the 1981 Act had placed on the hapu's right to pursue their claims and at the inadequate nature of the settlement.[103] Though other hapu shared similar views on the alleged inadequacy of the 1981 settlement, they continued to be represented on the trust board. The Tauranga Moana Maori Trust Board has become virtually defunct since then, but it did bring a claim to the Tribunal (see sec 1.3.7). We next consider that and other claims in relation to the 1981 'settlement' and the Sim commission.

99. Document A22, p 177
100. Morgan to Maori Trustee, 17 June 1987 (doc A22, pp 180–181)
101. Document A22, p 182
102. Document F3, pp 140–141
103. Document F20, p 17

12.8 Claimant and Crown Submissions

The joint submission spelled out alleged Treaty breaches arising from the Crown's various attempts to settle the Tauranga raupatu claims, from the Sim commission in 1927 to the Tauranga Moana Maori Trust Board Act of 1981. The Crown's failure to deal adequately with the long-standing raupatu grievance was said to be a failure to act in good faith toward Tauranga Maori, as well as being in breach of article 3 of the Treaty, which, according to counsel, guaranteed 'Maori as British subjects . . . proper access to justice'.[104] The joint submission also argued that the Sim commission 'failed to address the core grievances of the Tauranga iwi and hapu'. Because of 'the constraint of the terms of reference and the under-resourcing of the claimants', the submission claimed, 'the Tauranga tribes would not receive a fair hearing of their grievances' and, therefore, 'the inquiry was undertaken in breach of the rights of Maori under Article 3 of the Treaty of Waitangi'.[105] Counsel for Ngati Hangarau also made a submission on these issues, noting that his clients were not party to the Sim commission inquiry but that its findings had been used to dismiss their 1944 petition.

Submissions on behalf of the Tauranga Moana Maori Trust Board were presented as part of the joint submission. These provided a brief summary of the 1981 'settlement', starting with the 1975 deputation to Rowling and culminating in the Muldoon Government's 'take it or leave it' deal and the exclusion from the 1981 Act of Couch's promise to qualify the 'full and final settlement'. The joint submission quoted O'Malley to the effect that the 'Government was hardly acting in good faith towards the people of Tauranga Moana in refusing to budge from its original bargaining position and then subsequently breaking an apparent compromise agreement which had been negotiated'.[106] Counsel continued that:

> The evidence is clear that this was not and could not be a full and final settlement of the Tauranga Moana claims. . . . In addition, whilst an attempt at redress was made by the Crown and compensation paid, the manner of the Government's negotiations and the imposition of the deal would give rise to further grievances and would also mean the Tauranga raupatu claims would be unresolved yet again.[107]

Counsel also noted that, since 1985, Tauranga Maori had continued to press the Government for further compensation but no deal had been negotiated. According to counsel, there were 'significant flaws' in the 1981 Act, including the inconvenient definition of beneficiaries, which made it almost impossible for the trust board to compile a beneficiary roll. Counsel also said that the Act failed to allow Maori input into the structure of the board. One 'redeeming feature' of the Act was admitted: namely, that 'the reputation of those who fought at the battles of Tauranga was restored and exonerated'.

104. Document N11, p 205
105. Ibid, pp 204–206
106. Ibid, pp 203–204
107. Ibid, p 204

Counsel said that the settlement imposed in 1981 was 'insufficient to be considered [an] honourable and durable settlement and the claimants did not and do not consider it to be a full and final treatment of the Tauranga raupatu'. Counsel added that 'the settlement failed to focus on the interests of those who bore the burden of the raupatu'. Furthermore, the settlement sum was never going to be sufficient to distribute among the claimants or to use to form an endowment. Therefore, 'The Trust Board was constructed to fail.'[108]

Several other closing submissions by claimants referred to the 1981 Act and the accompanying 'settlement'. Counsel for Ngai Tukairangi, while endorsing the joint submission noted above, added that Rowling's 1975 announcement was made on Ngai Tukairangi's marae but that neither they nor their kaumatua, Kihi Ngatai, who was present (and appeared before us), thought that the 'settlement' reached six years later was 'fair, full and final'.[109] Counsel for Pirirakau said that the compensation authorised by the 1981 Act was 'totally inadequate and is not considered to be a full and final settlement'. Lastly, we note the submission of counsel for Ngai Tamarawaho, who said that they and their 'allies', Ngati Ruahine and Waitaha, 'strongly opposed accepting the settlement, but were outvoted by the rest of the Moana'. Although four Ngai Tamarawaho were appointed as representatives on the board, in recognition of the land that they lost, they were continually outvoted and eventually withdrew. Quoting Justice Edward Somers in *New Zealand Maori Council v Attorney-General*, counsel argued that there was a breach of Treaty principle because a wronged party had a right to 'fair and reasonable recognition of, and recompense for, the wrong that has occurred'. Applying this to Tauranga, counsel argued that, since the Sim commission, the Crown had 'completely failed to act fairly and reasonably towards its Treaty partner in Tauranga, thus compounding the sense of grievance'.[110]

We received no submissions from the Crown on the Sim commission, the events leading to the 1981 'settlement', the Tauranga Moana Maori Trust Board Act 1981, or any proceedings after the Act was passed. We are reluctant to make findings on these issues without knowing the Crown's position, but we note that the presiding officer of this Tribunal clearly stated that the 1981 Act and the Sim commission were topics for possible inclusion in the report.[111] In their closing submissions, claimant counsel made specific allegations of Treaty breach in relation to these issues. The Crown had the opportunity to respond but chose not to. In light of the allegations of Treaty breach that we have outlined in this section, we find it necessary to make findings on both the Sim commission and the 1981 'settlement'.

108. Document N15, p 17
109. Document N10, p 42
110. Document N23, pp 48–49
111. Paper 2.299

12.9 Treaty Findings

As we discussed in chapter 1, the principle of active protection that arises out of the provisions of the Treaty of Waitangi has been found by previous Tribunals to embrace the notions of honourable conduct by the Crown toward Maori and the right to fair process in the relationship between Maori and the Crown. We consider it impossible for Maori to have access to due or fair process if that process does not encompass the possibility of fair and reasonable redress for grievances arising out of past actions of the Crown. In Treaty terms, this right of redress applies principally to Maori groups, generally hapu. We therefore agree with the position, often stated by previous Tribunals, that redress for prejudice arising from Crown Treaty breaches should be aimed toward rebuilding the Maori tribal base. In making findings on the alleged Treaty breaches arising from the issues discussed in this chapter, we will assess the actions of the Government in the period after 1886 to see if it adequately took into account this principle of redress.

12.9.1 The Sim commission

We have already concluded at section 12.3.4 that the Sim commission wrongly found that Tauranga Maori deserved to have some of their land confiscated and that the Crown had dealt fairly with them in the aftermath of the Tauranga raupatu. We also noted that this conclusion was understandable, to a degree, in light of the commission's restricted terms of reference, the lack of time and resources devoted to the Tauranga claims, and the limited amount of documentary evidence available to the commission. However, the Government's direction to the Sim commission not to allow Maori petitioners to claim the benefit of the Treaty if their ancestors had 'denied the sovereignty of Her then Majesty' was a failure by the Crown to provide Maori with access to fair process. The Government assumed, without adequate investigation, that Tauranga and other Maori were in rebellion against the Crown during the wars of the 1860s, despite the fact that this had never been tested in the courts and was denied by the Ngati Ranginui petitioners. We consider that this prescribed exclusion of a Treaty-based analysis, coupled with the lack of resources devoted to the Tauranga raupatu claims, meant that the commission's report did not provide an adequate basis for the Government to redress the grievances of Tauranga Maori.

Moreover, the Government continued to rely on the findings of the Sim commission for nearly 50 years. In that time, much historical evidence came to light that threw doubt on the findings of the commission in regard to Tauranga. Taranaki and Waikato Maori managed to negotiate some compensation for their raupatu claims during this time, but on the basis of the commission's findings Tauranga Maori were denied any compensation. The Government failed either to revisit the Sim commission's inadequate findings or to consider the Tauranga claims in relation to the Waikato settlement. These failures adversely affected the ability of Tauranga Maori to gain redress for their grievances.

12.9.2 The Tauranga Moana Maori Trust Board Act 1981

From the mid-1970s, the Government ceased to rely on the findings of the Sim commission and attempted to negotiate a compensation package for Tauranga Maori. However, as we concluded at section 12.6, the final form of the compensation received by Tauranga Maori and embodied in the Tauranga Moana Maori Trust Board Act 1981 differed substantially from the terms that they had reluctantly assented to in negotiations with the Government. In particular, a clause agreed to by Tauranga Maori and the Minister of Maori Affairs, which would have allowed the claim to be revisited if other raupatu compensation payments were increased, was not included in the Act. The wording of the Act also covered all claims arising from Crown acquisitions of Tauranga land, while the Tauranga negotiators had agreed only to be compensated for their claim over the 50,000-acre confiscated block. These conditions were passed by Parliament as part of the 1981 Act despite the protests of Tauranga Maori and the Maori members of Parliament.

The quantum of the 1981 settlement was clearly inadequate for the purpose of a full and final settlement of the Tauranga raupatu claim. In no way did this settlement provide redress sufficient for Tauranga Maori to begin to establish an endowment to secure the economic future of their hapu. The Government made it plain to the Tauranga tribes that they could not expect to receive more than $250,000 and that this was the Government's final offer. The pressure on Tauranga Maori to accept the offer or get nothing was compounded by the fact that, owing to inflation, the value of the compensation was rapidly decreasing in real terms while Tauranga Maori were continuing to try to negotiate a fairer settlement. The attempts by the Government to provide redress for the legitimate claims of the Tauranga tribes not only were insufficient in terms of quantum but were themselves in breach of fundamental Treaty principles. The Crown was required by the principles of the Treaty to act honourably and in good faith in its negotiations with Tauranga Maori leading up to the 1981 settlement. At crucial points, it did neither. As a result, we believe that the claims of Tauranga Maori to redress have yet to be adequately dealt with by the Crown.

12.10 Chapter Summary

The main points in this chapter are as follows:

- The Sim commission's finding that the Tauranga raupatu claims were not well founded was relied upon by the Government for nearly 50 years. This Government stance denied Tauranga Maori the limited redress made available to Taranaki and Waikato Maori from the 1930s and 1940s.
- The Government eventually decided to negotiate a Tauranga raupatu settlement in the late 1970s and early 1980s. However, the quantum of settlement offered was inadequate, the negotiations were coercive at points, and agreements negotiated between the Crown

and Tauranga Maori were not honoured when the Government passed the Tauranga Moana Maori Trust Board Act 1981.

- The Crown was therefore in breach of its Treaty obligations to act in good faith toward, and provide adequate redress to, Tauranga Maori.

CHAPTER 13

RECOMMENDATIONS

13.1 Introduction

Up to this point, we have found that the Crown, in its relationship with Tauranga Maori, breached the principles of the Treaty in substantial ways in the period 1863 to 1886 (and on to 2004, in terms of making proper redress for those breaches). In this final chapter, we discuss the prejudice arising from these breaches and recommend how it can be remedied by the Crown. Before doing this, we briefly summarise the findings of Treaty breach that we have made in this report.

13.2 Summary of Findings

Here, we reiterate the major findings of Treaty breach that provide the basis for the discussion of the prejudicial effects suffered by Tauranga Maori in the next section. All of these Treaty breaches are intimately related to the confiscation of the Tauranga district. Although we have dealt with them in discrete chapters for the sake of convenience, we consider that these findings need to be viewed in their entirety for the scale of Crown Treaty breaches to be comprehended. If the breaches of the Treaty had been confined to the taking of the 50,000-acre confiscated block, the extent of the Crown's culpability would have been relatively limited. However, the initial breaches of the Treaty that arose when Tauranga Maori were attacked by the Crown and subsequently had some of their land confiscated were compounded by several subsequent acts and omissions of the Crown.

The key findings of Treaty breach in this report are as follows:

- In the events leading up to the battles at Te Ranga and Pukehinahina, and in the fighting itself, Tauranga Maori did not behave in a way that made military operations against them by the Crown justifiable (see chs 3, 4). The Crown, in attacking Tauranga Maori in 1864, was therefore in breach of its Treaty obligations actively to protect Maori and to allow them the continued exercise of their rangatiratanga. It also acted contrary to the principles of the Treaty by attacking its own citizens and, in so doing, failing to provide good governance.

- In light of this, the confiscation of any land at Tauranga was in breach of the Treaty. Again, Tauranga Maori did nothing to justify the Crown ignoring their Treaty rights and taking their land. Confiscation was in clear violation of the article 2 promise that Maori could retain their land as long as they so wished. Furthermore, the way in which confiscation was implemented at Tauranga was not in accordance with the New Zealand Settlements Act 1863, and this denied Maori the due process which the Crown is obliged to provide if the principle of active protection is to be upheld (see ch 6).
- In relation to the Crown's purchase of the Te Puna–Katikati blocks, it is clear that the sale of this large tract of valuable land was initiated with a small minority of loyalist Ngai Te Rangi chiefs. The Crown did not adequately take into account the interests of other Maori, especially those of Ngati Ranginui and Marutuahu, in its purchase process. The 'sale' of these interests cannot be viewed as a free and fair transaction – there was a clear element of duress in the 'sale' once the initial deed had been signed for the transfer of the blocks to the Government. This stemmed not only from the Crown having recently inflicted military defeat on Tauranga Maori but also from its ongoing threats to use military force. The purchase of Te Puna–Katikati was therefore carried out in defiance of the principle that Maori land should be alienated to the Crown only with the free and willing consent of its owners (see ch 7).
- The awarding of a Crown grant to the CMS for the Te Papa blocks following an investigation in 1844 was in breach of the principle of active protection. This was because the Crown failed to ascertain and acknowledge the conditional nature of the original transaction and wrongly granted title to the CMS for all of the 1330 acres that made up the blocks. In its acquisition of the CMS blocks in 1867, the Crown further breached the principles of the Treaty. While Maori were not, legally, the beneficial owners of the CMS land at Te Papa, the Crown was aware that the CMS had always maintained that it held the land for the benefit of Maori. The Crown disregarded this trusteeship role when it acquired the blocks from the society and so failed both to act in good faith towards Maori and to protect their interests (see ch 8).
- In enforcing the raupatu by arbitrarily locating the confiscated block without the consent of those Maori affected, the Crown's actions were in breach of the Treaty principle of reciprocity, which requires it to use its kawanatanga authority with due respect for Maori rangatiratanga. Furthermore, the way in which the Crown conducted the Tauranga bush campaign – attacking kainga and destroying crops – went beyond what was justified in order to provide protection for the civilian population at Tauranga or to arrest those accused of breaking the law. In this, too, the Crown's use of its kawanatanga authority was not adequately constrained by respect for Maori rangatiratanga (see ch 9).
- The process of allocating reserves in the confiscated and Te Puna–Katikati blocks and of returning land in the remainder of the confiscation district to Maori was in breach of Treaty principles for several reasons. Among these was the failure of the Crown to treat

Tauranga Maori fairly in its allocation of returned land. The hapu of Ngati Ranginui, in particular, were disadvantaged by this process, which led them to lose a higher proportion of their customary land than Ngai Te Rangi. By returning land in individualised tenure, the Crown also breached the Treaty because the individualisation of land interests was imposed without the consent of Tauranga Maori, undermined the authority of hapu, and made land susceptible to alienation. For these reasons, the Crown failed actively to protect Tauranga Maori (see ch 10).

- In conjunction with the land-return process, a large proportion of Maori land at Tauranga was sold prior to 1886. The Crown breached its Treaty obligations actively to protect Tauranga Maori by failing to ensure that these sales were in every case made with the consent of all those with rights in the land and were always in the best interests of the vendors. In particular, the Crown failed to ensure that the hapu of Tauranga were left with a sufficient endowment of quality land to provide for their needs, along with the skills or capital with which to develop their remaining holdings (see ch 11).
- Finally, the Crown's attempts to address Tauranga raupatu claims in the twentieth century not only failed to redress legitimate grievances adequately but were themselves, at key points in the process, in breach of its Treaty obligations to act in good faith toward Tauranga Maori (see ch 12).

13.3 Prejudice

13.3.1 Introduction

Here, we largely confine ourselves to examining any prejudicial effects of Crown acts or omissions that arose and were evident by 1886. In doing this, we do not mean to suggest that the prejudice suffered by Tauranga Maori as a result of the raupatu has not continued to be felt until the present. In our view, it clearly has.[1] However, because this report has only examined the period up until 1886 in detail, we shall confine our comments to the prejudice that arose in that period.

In general, we follow the approach of previous Tribunals that have considered the injurious effects of Crown Treaty breaches when dealing with historical claims. Like them, we do not try to quantify property loss in terms of lawful damage criteria but take a more general approach that takes into account a number of factors, including long-term social and cultural outcomes.[2] The principal reason for adopting this approach is the fact that prejudice arising from Crown Treaty breaches necessarily impacts upon the corporate identity of Maori

1. See J D Gould, 'Socio-economic Differences between Maori Iwi', JPS, vol 105, no 2 (June 1996), p 169; doc B14
2. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 312; see also Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 129–130; Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 405–406

society. Assessing prejudice by modern legal criteria may be useful when dealing with some contemporary claims that involve quantifiable losses of property experienced by individuals, but this approach is not helpful when assessing the historical effects of Crown actions upon hapu.

13.3.2 Prejudice arising out of war

Tauranga Maori were subject to much prejudice, including the loss of life, the destruction of kainga, and the occupation of their land by the military during the Waikato war, the Tauranga battles, and the bush campaign. These are significant prejudices arising out of Crown Treaty breaches. They have been keenly felt by Tauranga hapu up until the present day. The failure of the Crown to admit wrongdoing in relation to the fighting between its troops and Tauranga Maori in the 1860s, and its continued insistence that Tauranga Maori were in rebellion against their Queen, has meant an abiding grievance has remained in the mind of Tauranga Maori. The Crown's decision to invade the Waikato and declare anyone who resisted to be a 'rebel' destroyed the relatively peaceful relationships that existed in Tauranga between the hapu of the western and eastern harbour in the first half of the nineteenth century. Those Tauranga Maori who chose to honour their whanaungatanga and political links to Waikato–Tainui and the Kingitanga became alienated from their Tauranga kin who chose not to fight in the Waikato or at Tauranga. The division has persisted to this day, more particularly in the divisions between some hapu of Ngati Ranginui and Ngai Te Rangi. The Crown must endeavour to remedy this prejudice if a durable settlement of the Tauranga claims is to be found.

13.3.3 Prejudice arising out of confiscation

As we have made clear in chapter 6, the prejudice arising from the confiscation of Tauranga land was not confined to the taking and retention of the confiscated block. Had the Crown followed the provisions of the New Zealand Settlements Act 1863, as Attorney-General James Prendergast understood them in relation to the Tauranga confiscation, it is conceivable that the prejudicial effects of the confiscation would have been relatively limited. Had the Crown set aside and taken only the 50,000-acre block and abandoned the confiscation over the rest of the district, that land would have returned to Maori and been held under customary tenure. Then the Compensation Court would have heard claims for compensation from loyalists who lost land within the 50,000-acre block, and they would have been compensated accordingly. Finally, surrendered rebels whose interests lay within the confiscated block would have been allocated reserves sufficient for their maintenance.

We outline this hypothetical process to illustrate how divergent the confiscation at Tauranga was from the one authorised by the New Zealand Settlements Act. Because the

Crown departed from the provisions of that Act in such profound ways, Tauranga Maori were prejudicially affected by having their customary tenure over the whole district destroyed instantly and by being denied the opportunity to seek compensation for the confiscation of their lands in the Compensation Court. This denial of the due process of law to Tauranga Maori in the period 1865 to 1867 compounded the prejudice that they suffered as a result of the loss of the confiscated block. The Crown's argument that it was necessary to confiscate the whole district in order to allow the Government to compensate loyalists is not borne out by the facts. The reserves in Te Puna–Katikati were awarded mainly to Ngai Te Rangi chiefs, most of whom lost little land in the confiscated block and who had in any case been adequately compensated for their losses by being given reserves within the confiscated block itself. Other Tauranga Maori, most notably the hapu of Ngati Ranginui, were not sufficiently compensated and were mortified to find that some of their land in the confiscated block was 'returned' to Ngai Te Rangi individuals.

13.3.4 Prejudice arising out of land loss

In the early 1860s, virtually all the approximately 290,000 acres in the Tauranga inquiry district was held in Maori customary title. By 1886, an estimated 75,000 acres was Maori-owned, none of it in customary title. Of this remaining 75,000 acres, much land was of limited utility in the dominant Pakeha economy of the second half of the nineteenth century. The estimated 215,000 acres of land that passed out of Maori hands in the period which is the subject of this report was made up of the 50,000-acre confiscated block (less approximately 8700 acres of reserves allocated to Maori), the estimated 93,000-acre Te Puna–Katikati Crown purchase (less approximately 8000 acres of reserves), and an estimated 82,000 acres of reserves and 'returned land' alienated by Tauranga Maori. These three means by which the Tauranga estate was removed from Maori control and ownership were, to a significant degree, all the result of Crown acts or omissions found to be in breach of the Treaty. The detrimental effects of this land loss have been discussed at section 11.5. The limited area of land retained in Maori ownership that was suitable for raising livestock made it impossible for the great majority of Tauranga Maori to reap any benefit from the late nineteenth-century pastoral economy. Other Crown acts and omissions, especially the failure to recognise the beneficial interests of Tauranga Maori in the CMS blocks on which the town of Tauranga was built, further prevented Maori from gaining much economic benefit from the European settlement of the district.

The Crown has maintained in this inquiry that only the taking of approximately 42,000 acres within the confiscated block breached the Treaty. This reflects the long-held Government view that substantial justice was achieved by returning three-quarters of the confiscation district to Tauranga Maori. We emphatically reject this position. Tauranga Maori

never had three-quarters of the district 'returned' to them. Te Puna–Katikati was purchased by the Crown and much of the remainder of the district was purchased by private purchasers after the confiscation and before any form of title had been conferred on Tauranga Maori. The process of returning the 'three-quarters' was not complete until 1886, by which time only the aforementioned estimate of 75,000 acres remained in the effective ownership of Maori. The loss of the great majority of their estate is a clear prejudice suffered by Tauranga Maori as a result of Treaty breaches.

13.3.5 Prejudice arising out of tenure individualisation

Land that was returned to Tauranga Maori was returned in individual title. The hapu that had their land confiscated were not compensated with any land. Only individual members of hapu had title to land at Tauranga returned to them, even if it was occasionally intended to be returned in trust for their hapu. This amounted to a radical reordering of society that gravely diminished tino rangatiratanga or chiefly authority, which was guaranteed to Maori by article 2 of the Maori text of the Treaty. The fact that tenure individualisation was thought to be to the benefit of Maori by some Europeans in the mid-nineteenth century does not alter the fact that, without Maori consent, it was clearly in breach of the Treaty and caused significant prejudice to the hapu of Tauranga. Before the Government embarked on its mission to replace Maori communal title with an individual one, some important Government officials were aware of the potential ramifications of this policy. As Donald McLean stated in 1856:

> I do not think that it is practicable to issue Crown grants to natives by defining the boundaries of individual rights to land. It would be productive of quarrels and disputes, as there is really no such thing as individual title that is not entangled with the general interest of the tribe.[3]

The impracticality that McLean alluded to of translating Maori tribal title into individualised tenure relates to the impossibility of translating one cultural paradigm into another. The unilateral Crown attempts to do this at Tauranga led inevitably to the inter- and intra-tribal divisions, tribal dispersal, curtailment of traditional leadership, unequal wealth distribution, title fragmentation, and land alienation that have been found to have occurred following tenure individualisation in other districts.[4] Because of this, the prejudice suffered by Tauranga Maori was not confined to those hapu that lost land in the confiscated block.

3. 'Report of Board Appointed by his Excellency the Governor to Inquire into and Report upon the State of Native Affairs', in 'Copy of Dispatch from Governor T Browne to the Right Hon H Labouchere, MP', July 23 1856, BPP, vol 11, p 542

4. For example, Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 179–217; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, p 310

13.3.6 Relative prejudice suffered by Tauranga hapu

All hapu of Tauranga Moana were prejudicially affected in substantial ways by the confiscation of the Tauranga district. In terms of land loss, it is clearly the hapu whose customary rights were primarily located in the 50,000-acre confiscated block or in Te Puna–Katikati that were most adversely impacted. Some Ngai Te Rangi hapu, such as Te Ngare and Ngai Tamawhariua, whose interests were concentrated in the Te Puna–Katikati blocks, had their land base substantially reduced. The brunt of land loss, however, was borne by the hapu of Ngati Ranginui. Although Ngai Te Rangi hapu lost considerable land in the confiscated and Te Puna–Katikati blocks, they were largely able to relocate to other tribal land east of the harbour or on the inshore islands. Ngati Ranginui hapu, on the other hand, had their interests more intensely located in the blocks that the Government purchased or retained through confiscation, and they could relocate only to rugged bush lands. Following confiscation, Ngai Tamarawaho were awarded 142 acres of coastal reserves, Ngati Hangarau 130 acres, and the Wairoa hapu group 315 acres (but not until 1886), while the majority of Pirirakau received no coastal land.

These Ngati Ranginui hapu were clearly those most affected by the Crown's retention of the 50,000-acre confiscated block and purchase of Te Puna–Katikati. The allocation of reserves in these areas left them with title to little of their fertile coastal lands. Further, some of their customary land in and around Te Puna, Bethlehem, and Judea was awarded to individuals of Ngai Te Rangi, Ngati Pukenga, or Te Arawa. In the mid-1860s, the major Ngati Ranginui hapu were large groupings, and they were the hapu that struggled most to survive on their allotted land in the 1880s and 1890s. Waitaha also suffered harshly from land loss resulting directly from Crown Treaty breaches in the Tauranga district. The extension of the confiscation district boundary in 1868, the deliberate discrimination shown against them by the commissioners in the allocation of returned land, and the purchasing tactics used by the Crown in acquiring Otawa–Waitaha left Waitaha with little land in the Tauranga inquiry district. However, we are also of the view that the Crown did not ensure that any of the large hapu groupings of Tauranga maintained a sufficient endowment of quality land after 1886 that was capable of providing them with an economic base.

Other than the prejudice of unequal land loss, we consider that all the hapu of the district suffered from the effects of Crown intervention at Tauranga in equal measure. The undermining of the tribal right, guaranteed by article 2 of the Treaty, was experienced alike by those who were 'rebel' or 'loyal', Ngai Te Rangi or Ngati Ranginui. Other prejudices, which included bearing the stigma of rebellion, being denied due process, and suffering from the breakdown in inter-tribal relations, were felt by all the hapu of Tauranga. The one group that fared relatively well in the period immediately after the raupatu was not a hapu but a select group of chiefs, who were amply rewarded by the Government for services rendered to the Crown in the fighting and its aftermath. However, the various rewards given to this small group were of

benefit only in the short term, since the recipients usually quickly alienated the land awarded to them, and these awards in no way alleviated the prejudice that affected their hapu.

13.4 Recommendations

13.4.1 Introduction

As has been made clear in the preceding section, we consider that Tauranga hapu suffered significant prejudice as a result of Crown policy, practice, and law in the period 1863 to 1886. Substantial redress is due to them. The Crown has found it necessary to negotiate new settlements for the Taranaki and Waikato raupatu tribes, in the process overturning 'settlements' with them that had been in effect since the 1930s and 1940s. In these new settlements, it has been necessary for the Crown to take into account the principles of the Treaty of Waitangi. This reflects the heightened status of the Treaty in the Crown's thinking, as reflected in the Treaty of Waitangi Act 1975 and its 1985 amendment. The Crown now needs to negotiate a new settlement for the Tauranga tribes, in place of that imposed in 1981, which takes into account the principles of the Treaty.

The long-held Government claim that three-quarters of the Tauranga district was 'returned' to Maori can no longer be used to justify the inadequate settlement of the Tauranga raupatu claims, especially since other raupatu claims have been or are in the process of being settled. After the Waikato confiscation, the hapu of Waikato–Tainui were compensated through the Compensation Court. Once this process was completed in the late 1860s, approximately one-quarter of the Waikato land was in Maori ownership.[5] A similar percentage of the Tauranga district was in the ownership of Maori in 1886 when the return of land was completed there. The Crown has acknowledged that Waikato suffered 'widespread suffering, distress and deprivation' as a result of the raupatu of their lands.[6] It has also made similar acknowledgements concerning the effect of confiscation on Taranaki iwi.[7] In relative terms, we do not consider that Tauranga Maori suffered less prejudice than these other raupatu tribes, more especially when we weigh up the losses of land in the entire 290,000-acre confiscation district and not merely in the 50,000-acre confiscated block. Since sufficient remedy has been so long delayed, the claims of Tauranga Maori require urgent and generous redress that is comparable to that of the other raupatu iwi.

We now offer some suggestions on how the Crown might endeavour to negotiate a settlement with the hapu that were prejudicially affected by the Tauranga raupatu. We refrain

5. Waikato Raupatu Claims Settlement Act 1995, preamble at F
6. Ibid, preamble at G
7. For example, Ngati Ruanui Claims Settlement Act 2003, s 7(3)(a)

from recommending specific remedies at this stage of our inquiry.[8] Instead, we propose here a general framework for negotiating toward the resolution of the Tauranga claims. A more comprehensive set of recommendations may be provided on the completion of our stage 2 inquiry and report – if they prove to be necessary.

The Crown has previously indicated that the settling of raupatu claims is a priority. Furthermore, though we intend to hear stage 2 of the Tauranga Moana claims if that is what the parties desire, we consider that the significant prejudice caused to the aspirations of Tauranga hapu arising out of the events of the nineteenth century requires urgent remedy. However, the post-1886 claims also contain significant grievances that have the potential, if well-founded, to increase the quantum of settlement that will be necessary to remedy the total prejudice suffered by Tauranga Maori. These claims will need to be adequately accounted for in any comprehensive settlement.

We therefore recommend that the Tauranga claimants and the Crown review this report and decide whether it provides a sufficient basis for proceeding immediately to a negotiated settlement. If the parties agree to proceed directly to negotiation, post-1886 issues will need to be accounted for by drawing on the extensive research on these matters in the Tauranga casebook. The Tribunal will seek the opinions of the Crown and the claimants on this matter within four months of the release of this report. The parties are requested to give their views in writing on whether they wish to proceed directly to a negotiated settlement or to have stage 2 claims heard by the Tribunal. Alternatively, if the parties prefer it, the Tribunal could proceed with stage 2 hearings while negotiations were in progress. Any such 'parallel path' could be undertaken only on the clear understanding that the Tribunal would refrain from making recommendations concerning remedies in order that the Crown's negotiation process not be compromised.

13.4.2 Representation

In their submissions to this Tribunal, claimant counsel representing Pirirakau and Ngai Tamarawaho, among others, requested that the Tribunal recommend remedies specific to their hapu.[9] We have refrained from doing this in the belief that specific recommendations are of limited relevance, owing to the wide-ranging prejudice suffered by Tauranga Maori, the realities of the negotiation process, and the stage 2 Tauranga claims that may yet be heard.

8. We note the remedies sought by claimant counsel in their closing submissions but do not comment on them in any detail in this report. We will possibly consider submissions relating to remedies further in our stage 2 inquiry, if it takes place: see claim 1.32(a), pp 18–19; doc N1, p 6; doc N3, pp 12–15; doc N6, p 23; doc N7, pp 38–39; doc N8, pp 23–24; doc N9, pp 53–54; doc N10, pp 51–52; doc N11, pp 210–225; doc N14, pp 29–30; doc N15, p 20; doc N16, pp 43–45; doc N17, pp 30–31; doc N18, pp 24–25; doc N19, p 20; doc N20, pp 40–41; doc N21, p 18; doc N22, p 23; doc N23, pp 52–53; doc P11, pp 5–7.

9. Document N9, p 54; doc N22, p 23; doc N23, p 52

Given the Crown's preference to negotiate with 'large natural groups', we suggest that distinct hapu or whanau interests be accounted for under the umbrella of larger claimant groups. However, the major interests of two of the groups that appeared before us, Waitaha and Marutuahu, lie outside the district, and claims lodged on their behalf have been or may be heard by other Tribunals. We therefore recommend that the claims of Marutuahu iwi within the Tauranga inquiry district which have been upheld in this report (see chs 7, 10) be included in negotiations that may arise from the Tribunal's Hauraki inquiry. We recognise, however, that Marutahu may wish to be heard further on the issue of the Crown-licensed Athenree Forest in our stage 2 inquiry, if this takes place. Ngati Pukenga's claims are also being considered in the Hauraki and Tauranga inquiries, though they are quite separate. It is possible that the Tauranga claims of Ngati Pukenga will not need to be remedied separately. Given their historical ties to Ngai Te Rangi, it may be appropriate for Ngati Pukenga to be grouped with that iwi in negotiations to settle their Tauranga claims.

The position of Waitaha is not one that lends it to being 'naturally grouped' with the other hapu of Tauranga Moana or elsewhere. Waitaha trace their descent from a different waka than Ngai Te Rangi or Ngati Ranginui. Waitaha's rohe straddles two inquiry districts and they have, from the nineteenth century to the present day, been estranged from the mainstream of Te Arawa tribal organisation.[10] It may therefore be preferable for Waitaha to negotiate a separate settlement with the Crown, if that is their desire and if their claims cannot be considered in the central North Island inquiry. Though Waitaha are numerically relatively small, the Crown has shown a willingness to negotiate settlements with Taranaki groups of a similar size, and we consider it appropriate that the Crown hold open the possibility of doing the same with Waitaha.

The two major iwi whose interests dominate the Tauranga inquiry district are Ngati Ranginui and Ngai Te Rangi. As is evident throughout this report, these groups have maintained distinct identities throughout the nineteenth and twentieth centuries and into the present. The Crown could, within the framework of its stated Treaty settlement policy, negotiate separate settlements with these two iwi, if they so desire.

13.4.3 Nature of remedies

Most claimant counsel sought a recommendation from the Tribunal that the Crown offer a formal apology to the hapu of Tauranga for breaches of the Treaty that prejudicially affected them.[11] The Crown's failure to acknowledge the raupatu claims of Tauranga Maori for much of the 140 years since they came into being means that a full apology from it will be necessary before it can begin to remove the prejudice arising from the raupatu. We recommend that the

10. Paper 2.415, p 3
11. Document N11, p 219

Crown offer an unambiguous apology to the hapu of Tauranga Moana covering the Treaty breaches that we have summarised above.

We consider that a generous and expeditious remedy is required for Tauranga Maori for the prejudice suffered by them as a result of Crown laws, actions, and omissions. Such reparation is necessary not only to restore the honour of the Crown in its relationship with Tauranga Maori but also to establish an economic base from which Tauranga hapu can pursue their future aspirations. As we have continually emphasised in this report, Crown Treaty breaches mainly impacted on hapu and, given that, the ultimate settlement aim should be to restore the economic and social foundation of Tauranga hapu.

In their closing submissions to us, most counsel sought a recommendation that title to land, foreshore, seabed, riverbed, or geothermal resources be vested in the hapu they represented.[12] We may consider waterway issues in our stage 2 inquiry, if it takes place, but as far as what was lost to the raupatu and by other means prior to 1886 is concerned, we do not consider it appropriate for us to make specific recommendations as to which land should be vested in which hapu at this stage of our inquiry. This issue is a matter for negotiation between the claimants and the Crown. However, we do recommend that the Crown make available for the settlement of the claims as much Tauranga district land as it has at its disposal.

More specific recommendations relating to the use of Crown-owned or Crown-memorialised land in settling the Tauranga Moana claims might be made in the stage 2 inquiry, should this prove to be necessary. For instance, though two claimant groups sought the 'return' of the Crown-licensed Athenree Forest during our inquiry, it is not appropriate for us to make a recommendation on the matter at this point in time.[13] What evidence we have heard suggests that Tauranga and Hauraki Maori shared customary interests in the area to roughly the same extent (see ch 2) and that the Treaty breaches arising from the Crown acquisition of the area affected the two groups in a similar measure (see ch 7).

We are aware that negotiations are currently underway to have Mauao returned to Tauranga Maori and then gifted to the Crown or local government to be held in benefit for all New Zealanders. We consider some such redress to be appropriate, provided it restores the mana of Mauao to Tauranga Maori by giving them control over identifiable wahi tapu sites on the mountain and a real share in the management of it. We also recommend that the specific Treaty breaches that this Tribunal has found occurred in the Crown confiscation, return, and purchase of Mauao be taken into account in any negotiations.

In closing submissions, several counsel sought a recommendation from the Tribunal that the Crown pay the costs incurred by their clients in preparing for, and being represented at,

12. Claim 1.32(a), p 18; doc N1, p 6; doc N7, p 38; doc N9, p 53; doc N10, p 51; doc N14, pp 29–30; doc N15, p 20; doc N16, pp 43–44; doc N17, p 30; doc N18, p 24; doc N19, p 20; doc N20, pp 40–41; doc N23, p 52
13. Document P11, pp 5–7; claim 1.44

Tribunal hearings.[14] Since this Tribunal has upheld the main claims of Treaty breach alleged by the claimants in relation to the raupatu, we consider it appropriate that the Crown reimburse the claimants for any reasonable costs that they incurred in presenting their stage 1 claims, provided that they have no other means to recover them.

13.5 Chapter Summary

The main points in this chapter are as follows:

- Tauranga Maori suffered considerable prejudice as a result of breaches of the principles of the Treaty arising from Crown laws, policies, and actions in the period before 1886. Substantial redress is due to them.
- The Tribunal recommends that the Crown and the Tauranga claimants review this report and decide whether it provides an adequate basis for a negotiated settlement of the Tauranga claims or whether they wish first to proceed with stage 2 of the inquiry.

14. Claim 1.32(a), p 19; doc N3, p 13; doc N10, p 51; doc N11, p 224; doc N15, p 20; doc N16, p 44; doc N18, p 24

Dated at Wellington this 11th day of August 2004

RR Kearney, presiding officer

J Clarke, member

A Koopu, member

MPK Sorrenson, member

THE SEAL OF THE WAITANGI TRIBUNAL

CHAPTER 14

MINORITY OPINION

I agree that the Crown breached the principles of the Treaty at several points in its dealings with Tauranga Maori in the second half of the nineteenth century and that it therefore needs to remedy the prejudice it caused them. I am providing a brief minority opinion in preference to signing the full report because I believe that the report goes too far. It finds Treaty breaches that were not sustained by the evidence put before us. The report, in my view, also fails to acknowledge the very considerable efforts that the Crown made to be fair to Tauranga Maori.

14.1 The Tribunal Findings with which I Agree

First, the promises made by Governor Sir George Grey to Maori at the Pacification Hui in August 1864 were not carried through in the manner in which Maori were led to believe they would be. Those Maori who attended the hui represented a large number of hapu affected by the then-recent hostilities. They surrendered the 'mana' of their lands to the Governor, and he in turn assured them that he intended to keep only 25 per cent of the area. In the process of retaining that 25 per cent and returning the other 75 per cent to Maori, there were sufficient breaches of any reasonable definition of the principles of the Treaty to warrant a finding against the Crown. The identification of the parameters of the 50,000 acres kept by the Crown was done in such an arbitrary manner as to cause insult as well as injury. Some Ngati Ranginui hapu such as Ngai Tamarawaho and Ngati Hangarau, who appear to have been living on or cultivating land that was almost exclusively within the 50,000-acre block, were inadequately recompensed for their losses. Maori were entitled to believe that all the assurances of the Governor would be fulfilled. While one cannot deny that occasionally there were administrative difficulties in delivering on those assurances, that does not alter the fact that several hapu were unreasonably disadvantaged by the Crown's actions.

Secondly, the Crown failed to ascertain and acknowledge the conditional nature of the original 1830s CMS transaction concerning the Te Papa blocks, and it wrongly granted title to those blocks to the CMS, then unfairly acquired them in 1867. The Crown's inquiry into the ownership of those blocks was, at best, perfunctory. In short, the Crown did not act in good faith towards Maori over the CMS lands.

Thirdly, the Crown's purchase of Te Puna–Katikati was initiated by a minority of Ngai Te Rangi chiefs. The interests of others were not adequately taken into account either by those chiefs or by the Crown, although officials subsequently made considerable efforts to recompense others claiming an interest in those lands. While the Crown paid Maori a sum that in total was reasonably generous for the time and place, some Maori who received later compensation appear to have been victims of a process that denied them the opportunity to make free and willing consents to sell in the first place. The failure adequately to obtain consent to the sale from all those with an interest in Te Puna–Katikati constitutes, in my view, a breach of the Treaty under article 2.

14.2 Finding

The Crown has a duty to make amends for these Treaty breaches. In my view, it should move swiftly into negotiation with claimant groups, even if some post-1886 claims are still being heard or considered by the Tribunal. Despite my dissenting views on a number of points in the report, my conclusions do not warrant any lessening of the quantum of settlement made with Tauranga Maori. The Treaty breaches were serious, and should be acknowledged as such.

14.3 The Findings with which I Do Not Agree

The assertion that Tauranga Maori 'did not behave in a way that made military operations against them by the Crown justifiable' (see sec 13.2) was not warranted by the evidence presented to us.

It was clear to me that Tauranga Maori knowingly placed hearth and home in danger when they chose to travel westward and engage in the Waikato war. Prior to the wars, Tauranga had been governed almost exclusively by Maori and was relatively untroubled by any of the impacts of colonisation. By their actions in 1863, Maori heightened the likelihood that colonial troops would be stationed in Tauranga for the purposes of cutting off Maori supply lines to the Waikato. Once the troops were in Tauranga, the evidence further demonstrated that local Maori sought to provoke an encounter with the colonial forces. By their actions in Tauranga, they brought on the battle at Pukehinahina (Gate Pa) in late April 1864, and certainly were not surprised when it resulted in bloodshed. Having taken these risks, which produced a victory for them, the prospect of a subsequent battle such as occurred at Te Ranga in June 1864 (when Maori were attacked and defeated) could never be ruled out. While Tauranga Maori suffered unduly as a result of the Crown's subsequent failure to fulfil its

promises, the choices that they had earlier made contributed to their ultimate misery. The argument advanced at the hearings that Maori had no option but to go to the Waikato was unconvincing. Tauranga Maori must accept some responsibility for their later predicament.

There is an age-old expectation by people everywhere that in the event of defeat in battle there will be reprisals. Tauranga Maori understood this, and when 'the mana' of their lands was offered to Governor Grey in August 1864, they were doing no more than acknowledging their loss on the battlefield. The real issue, as I have said above, is whether what was agreed to with the Governor after the hostilities was what was ultimately enforced. In my view, it was not, and as a result some Tauranga Maori suffered more than others because of the Crown's failures.

I do not agree that the Crown committed a Treaty breach by extinguishing customary title across the Tauranga confiscation area. Had the Crown sought to sustain the customary title of all Maori-owned land, and insisted on its retention in that state, nothing is surer than that there would have been a Treaty claim under article 3. That article guarantees Maori the rights and privileges of British subjects. The right to buy and sell the assets in which one has an interest was something envisaged in that Treaty clause. As Maori adapted their lives to the growing settler culture in their midst, and as many exercised choices by leaving the land (and not always because they were forced to do so, as the report frequently suggests), being able to trade in their real assets made good sense. The Crown correctly anticipated Maori needs in this regard, and to say otherwise is to overlook key facts. There are similar problems with those pages in chapter 11 that deal with the restrictions on the alienation of Maori land. Had the Crown rigidly enforced rules preventing land alienation, there is no doubt in my mind that there would have been Treaty objections by Maori under article 3. There was evidence placed before us suggesting that many Maori were as eager as the potential buyers were to see an end to the Government's alienation restrictions.

It follows from what I have just said that the process of individualisation of title cannot be so airily dismissed as it is in this report. The evidence provided to us showed that the Crown's agents were usually diligent in their efforts to be fair to those with an ascertainable interest in customarily held land. There were some occasions when the process was not as scrupulously handled as in others. There were also occasions when the process of granting title was rushed, sometimes because of demands from speculators keen to get access to the land. However, sometimes it was Maori who were keen to complete the sale. There was no systematic injury perpetrated on Maori throughout the process of individualisation of title, and hence no broad policy warranting a finding of Treaty breach.

The fact that a large proportion of Maori land in Tauranga was sold by Maori prior to 1886 was partly due to pressure from buyers. However, it must be remembered that for a long time after the wars Tauranga was not seen as a particularly desirable area for European settlement. The population figures in this report for the early 1870s make this clear. What was apparent to

me was that a few Maori who succeeded in obtaining title to land regarded the proceeds from its sale as a source of income. A few were shifting away from the land to work in the Coromandel and Waihi gold mines, while others became gum diggers or worked on infrastructural projects. Intermarriage with settlers was quite common, and provided opportunities to lead a different lifestyle, sometimes away from ancestral land. For such people, the ability to realise their assets made it easier to adjust to, and make progress within, the new colonial world. It was clear to me that Maori continued exercising choices as they were entitled to do under the Treaty. The assertions in some claimant evidence that there was something akin to a Crown plot to dispossess them of their individualised titles received some endorsement in the report. For my part, I found the claimants reluctant to discuss the choices that Maori were clearly exercising in the late nineteenth century. Throughout our hearings, it suited far too many lawyers and claimants to portray Maori as naive victims, rather than active participants in late nineteenth-century history. In my opinion, this patronising line of argument was only occasionally sustained by the evidence put before the Tribunal. I cite cases above where it was.

The argument in the report to the effect that the Crown allowed Maori to alienate more of their land than was necessary for their forseeable needs, and that that constituted a Treaty breach, requires evidence of much more careful thought. Assertions such as that Maori required more than 50 acres each if they were to survive show little appreciation of the rapidly building population pressures in New Zealand and of the changing occupational preferences being expressed by Maori in the late nineteenth century. Moreover, there is little discussion in the report about the problems of calculating likely future Maori needs when many people, Maori included, thought in the 1870s and 1880s that the race was dying out. Nor is there any discussion of whether, in Treaty terms, it would have been acceptable for the Crown to prevent Maori doing what some clearly wanted to do, and what they were entitled to do under article 2 of the Treaty – namely, sell land in which they held an interest.

Finally, in my view there is a patronising attitude towards Maori lying beneath too many parts of the report. It disturbs me, and I regret that the Crown in its cursory final submissions to the Tribunal did not make more of this failing. The problem in the report flows, I believe, from a misreading of the initial purpose of the Treaty and from a misguided attempt to visit on the past many mid-twentieth-century ideas about governance. The small three-clause document that constitutes the Treaty was not intended by the British Crown as requiring the erection of an all-powerful, regulatory, State apparatus that would govern every detail of Maori–Pakeha interaction. Nor was the Treaty intended to deny Maori those rights enjoyed by settlers. While it is clear that in the aftermath of the New Zealand Wars the Crown paid too little attention to the details of what had been promised to Tauranga Maori by the Governor, officials did try to accommodate many Maori aspirations as they understood them. They did this in the light of then-current beliefs about the obligations resulting from the Treaty and

prevalent conventions and thinking about the role of the State and the role of Maori within New Zealand society. Visiting the nineteenth century with 1960s and 1970s notions of the State's all-encompassing social responsibilities, and with some people's inflating views about the Crown's Treaty obligations, makes for bad history and indicates poor historical judgement. Sadly, it is my view that there is quite a lot of both in the report.

Dated at Wellington this 11th day of August 2004

M E R Bassett, member

THE SEAL OF THE WAITANGI TRIBUNAL

APPENDIX I

RECORD OF INQUIRY

RECORD OF HEARINGS

The Tribunal

The Tribunal constituted to hear Wai 215, concerning the Tauranga Moana claims, comprised Judge Richard Kearney (presiding), the Honourable Dr Michael Bassett, John Clarke, Areta Koopu, and Professor Keith Sorrenson.

The Hearings

First hearing

The first hearing was held at Huria Marae, Judea, from 23 to 27 February 1998.

Second hearing

The second hearing was held at Tutereinga Marae, Te Puna, from 18 to 22 May 1998.

Third hearing

The third hearing was held at Wairoa Marae, Bethlehem, from 9 to 13 November 1998.

Fourth hearing

The fourth hearing was held at Bethlehem Marae, Bethlehem, from 17 to 21 May 1999.

Fifth hearing

The fifth hearing was held at Tamapahore Marae, Mount Maunganui, and Tahuwhakatiki Marae, Welcome Bay, from 28 June to 2 July 1999.

Sixth hearing

The sixth hearing was held at Huria Marae, Judea, from 7 to 11 February 2000.

Seventh hearing

The seventh hearing was held at Hairini Marae, Tauranga, from 27 to 31 March 2000.

Eighth hearing

The eighth hearing was held at Waikari Marae, Tauranga, from 29 May to 2 June 2000.

Ninth hearing

The ninth hearing was held at Whareroa Marae, Mount Maunganui, from 25 to 29 September 2000.

Tenth hearing

The tenth hearing was held at Opureora Marae, Matakana Island, from 4 to 6 December 2000.

Eleventh hearing

The eleventh hearing was held at Rereatukahia Marae, Katikati, from 5 to 8 March 2001.

Twelfth hearing

The twelfth hearing was held at Hei Marae, Te Puke, from 2 to 5 April 2001.

Thirteenth hearing

The thirteenth hearing was held at Ngahutoitoi Marae, Paeroa, and Te Whetu o Te Rangi Marae, Welcome Bay, from 8 to 12 October 2001.

Fourteenth hearing

The fourteenth hearing was held at Tauranga House, Tauranga, from 15 to 18 October 2001.

Fifteenth hearing

The fifteenth hearing was held at Tutereinga Marae, Te Puna, from 3 to 6 December 2001.

The Counsel

The following list is a record of counsel who have made opening or closing submissions (or both) at hearings in the course of the Wai 215 inquiry. Other counsel made appearances before the Tribunal at hearings but are not noted here.

Joe Williams, Spencer Webster, Layne Harvey and Joni Bryant made submissions on behalf of the Wai 42(a), Wai 228, Wai 266, Wai 370, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, Wai 854, Wai 859, and Wai 938 claimants; Paul Harman made submissions on behalf of the Wai 42(c) and Wai 522 claimants; Paul Majurey and Titus Rahiri made submissions on behalf of the Wai 100, Wai 454, Wai 650 and Wai 812 claimants; Craig Coxhead and Steven Clarke made submissions on behalf of the Wai 211 and Wai 227 claimants; Michael Sharp and Rachael Paul made submissions on behalf of the Wai 342 claimants; Victoria Kingi, Katherine Ertel and Liz Cleary made submissions on behalf of the Wai 362, Wai 717, and Wai 947 claimants; Alan Tate made submissions on behalf of the Wai 546 claimants; Carrie Wainwright, Kerensa Johnston, and Karen Feint made submissions on behalf of the Wai 659 and Wai 664 claimants; John Rangitauira made submissions on behalf of the Wai 707 claimants; Stephen Bryers made submissions on behalf of the Wai 727 claimants; John Koning and David Ambler made submissions on behalf of the Wai 755 and Wai 807 claimants; and Andrew Irwin and Rebecca Ellis made submissions on behalf of the Crown.

RECORD OF PROCEEDINGS

1. Claims

1.1 Wai 42

A claim lodged by Anaru Kohu senior and others concerning Ngati Ranginui land, 13 September 1987

(a) A claim lodged by Gordon Pihema and others concerning Wairoa land, 19 October 1986
Amendment to claim 1.1, 5 November 1998

(b) A claim lodged by Jacqueline Sayers concerning confiscation and trespass action in the District Court, 20 May 1987

(c) A claim lodged by David Murray and others concerning confiscation and Katikati railway land, 22 December
Addition to claims 1.1(c) and 1.24, 4 March 2001

(d) A claim lodged by Alex Tata and others concerning Tauranga Town Hall site, 28 August 1987

1.2 Wai 47

A claim lodged by William Ohia concerning Ngati Pukenga, Ngaiterangi, and Ngati Ranginui land and resources, 23 February 1990

1.3 Wai 159

A claim lodged by Isobel Berkett concerning Tuhua Island, 10 August 1990

(a) Amendment to claim 1.3, 25 March 1991

1.4 Wai 162

A claim lodged by Wiremu Ohia concerning Kopukairoa land, 20 March 1990

1.5 Wai 208

A claim lodged by Raymond Dillon on behalf of the Ngati Kahu Te Pura Trust concerning the Bethlehem School site, 30 March 1987

1.6 Wai 209

A claim lodged by Jim Gray on behalf of the Otawa Kaiate Trust concerning Otawa blocks, 13 April 1987

1.7 Wai 210

A claim lodged by Keepa Smallman concerning Ngati Pukenga land taken for public works, 27 January 1988

1.8 Wai 211

A claim lodged by Mahaki Ellis concerning the Whareroa blocks, 31 July 1988

(a) Addition to claim 1.8, 1 September 1997

(b) Addition to claim 1.8, 3 November 1997

(c) Addition to claim 1.8, 13 January 1998

(d) Addition to claim 1.8, 19 January 1998

1.9 Wai 227

A claim lodged by Colin Bidois concerning Te Puna land, 14 August 1991

(a) Amendment to claim 1.9, 22 April 1998

1.10 Wai 228

A claim lodged by Taiawa Kuka concerning Matakana Island, 15 August 1991

(a) Amendment to claim 1.10, 15 August 1991

(b) Amendment to claim 1.10, 23 May 1994

(c) Amendment to claim 1.10, 3 December 2000

1.11 Wai 266

A claim lodged by Sonny Tawhiao concerning Matakana Island, 3 December 1991

(a) Amendment to claim 1.11, 19 November 1992

1.12 Wai 336

A claim lodged by Des Kahotea concerning ancestral land and the Energy Companies Act 1992, 18 February 1993

1.13 Wai 342

A claim lodged by Toa Faulkner concerning Ngati He land, 6 February 1993

(a) Amendment to claim 1.13, 25 November 2000

(b) Amendment to claim 1.13, 7 December 2000

1.14 Wai 353

A claim lodged by Patrick Nicholas concerning Mount Maunganui and Tauranga city land, 31 May 1993

(a) Amendment to claim 1.14, 17 November 1993

1.15 Wai 356

A claim lodged by Patrick Nicholas concerning land from Wairoa to Katikati, 31 May 1993

(a) Amendment to claim 1.15, 1 August 1994

(b) Amendment to claim 1.15, 8 August 1994

(c) Amendment to claim 1.15, 29 August 1994

(d) Amendment to claim 1.15, 29 August 1994

(e) Amendment to claim 1.15, 5 September 1994

(f) Amendment to claim 1.15, 5 September 1994

(g) Amendment to claim 1.15, 13 October 1994

(h) Amendment to claim 1.15, 25 November 1994

(i) Amendment to claim 1.15, 24 November 1994

1.16 Wai 360

A claim lodged by Lance Waaka concerning Matapihi–Ohuki 3, 25 June 1993

1.17 Wai 362

A claim lodged by Lance Waaka concerning Tauranga confiscated land, 25 June 1993

(a) Amendment to claim 1.17, 31 August 2001

(b) Amendment to claim 1.17, 31 August 2001

1.18 Wai 365

A claim lodged by Rawiri Tooke concerning Matakana Island, 31 March 1993

(a) Amendment to claim 1.18, 28 February 1995

1.19 Wai 383

A claim lodged by Colin Bidois concerning the Te Puna–Katikati blocks, 13 September 1993

1.20 Wai 465

A claim lodged by Linda Grey concerning Maungatapu and Kaitimako land, 22 September 1994

1.21 Wai 489

A claim lodged by Toa Faulkner concerning Whareroa blocks and fishing rights in the Tauranga Harbour, 2 December 1994

(a) Addition to claim 1.21, 15 November 1995

1.22 Wai 497

A claim lodged by Toa Faulkner concerning Bay of Plenty Polytechnic, Tauranga, 7 April 1995

1.23 Wai 503

A claim lodged by Michael O'Brien concerning Tauwharawhara, Te Papa Paengaroa, Kaimai, and Whati Karanui, 3 April 1995

(a) Amendment to claim 1.23, 11 May 1999

1.24 Wai 522

A claim lodged by Kevin Bluegum concerning land from Waipapa Stream to Waiau Stream, parts of Athenree Forest, and Matakana Island, 15 June 1995

(a) Addition to claim 1.24, 4 March 2001

1.25 Wai 540

A claim lodged by Kihi Ngatai concerning Mauao, Motuotau Island, Moturiki Island, Karewa Island, and Tauranga Harbour bed, 24 July 1995

(a) Amendment to claim 1.25, 18 June 1997

(b) Amendment to claim 1.25, 13 September 2000

1.26 Wai 546

A claim lodged by Tureiti Stockman concerning Ngati Tapu land, 12 September 1995

(a) Addition to claim 1.26, 16 June 1996

(b) Addition to claim 1.26, 12 February 1998

(c) Amendment to claim 1.26, 15 May 2000

1.27 Wai 580
A claim lodged by Toa Faulkner and others concerning the Otamataha lands, 6 February 1996

1.28 Wai 603
A claim lodged by Wirepa Te Kani and others concerning thePapakanui Trust, 14 June 1996

1.29 Wai 370
A claim lodged by Toa Faulkner concerning Tauranga confiscated land, 24 June 1993
(a) Amendment to claim 1.29, 25 May 2000

1.30 Wai 611
A claim lodged by Christopher Tangitu concerning Ngati Ranginui interests in Tauranga Moana, 3 June 1996

1.31 Wai 636
A claim lodged by Rangi Makarauri concerning section 6B1A of the Papamoa 2 block, 27 March 1996
(a) Amendment to claim 1.31, 7 April 2000

1.32 Wai 637
A claim lodged by Shane Ashby concerning the Tauranga confiscation, 1 October 1996
(a) Amendment to claim 1.32, undated

1.33 Wai 645
A claim lodged by Enoka Ngatai concerning the Tauranga Moana Maori Trust Board Act 1981, 7 November 1996
(a) Addition to claim 1.33, 14 October 1997

1.34 Wai 650
A claim lodged by Toko Te Taniwha and others concerning the Athenree Forest and surrounding land, 24 December 1996
(a) Amendment to claim 1.34, 1 October 2001

1.35 Wai 659
A claim lodged by Desmond Tata and others concerning Ngai Tamarawaho land, 22 January 1997
(a) Amendment to claim 1.35, 6 February 2000

1.36 Wai 664

A claim lodged by Thomas McCausland and others concerning Waitaha land, 14 February 1997

(a) Amendment to claim 1.36, 2 November 2001

1.37 Wai 668

A claim lodged by Wi Te Kani concerning Ngai Tukairangi land, 27 March 1997

1.38 Wai 672

A claim lodged by Michael O'Brien and others concerning Ngati Hangarau land, 7 April 1997

(a) Amendment to claim 1.38, 11 May 1999

1.39 Wai 86

A claim lodged by Peri Kohu and others concerning Waekareao Estuary, 10 October 1988

(a) Application for urgent hearing concerning Waekaerao Estuary, 16 March 1990

1.40 Wai 701

A claim lodged by Colin Bidois and others concerning Te Puna–Katikati blocks and the Athenree Forest, 18 February 1998.

1.41 Wai 702

A claim lodged by Taane Karaka and others concerning Waitaha lands and resources, 21 January 1998

1.42 Wai 707

A claim lodged by Hoki Leef-Bruce and another concerning lots 16 and 154 of the parish of Te Puna, undated

1.43 Wai 708

A claim lodged by Hoki Leef-Bruce and another concerning Tauranga Harbour, undated

1.44 Wai 714

A claim lodged by Hone Williams concerning Ngati Koi reserves and other blocks, 23 March 1998

1.45 Wai 715

A claim lodged by Jackson White concerning Matakana Island, 17 April 1998

(a) Addition to claim 1.45, 10 March 1999

(b) Addition to claim 1.45, 26 April 1999

1.46 Wai 717
A claim lodged by Matire Duncan and others concerning confiscation and public works takings, 11 May 1998
(a) Amendment to claim 1.46, 23 June 1999

1.47 Wai 727
A claim lodged by Rapata (Bob) Leef and others concerning lands and resources of Pirirakau hapu, undated
(a) Amendment to claim 1.47, 7 March 2001
(b) Amendment to claim 1.47, 24 April 2001

1.48 Wai 751
A claim lodged by Awanuiarangi Black concerning the Ngapeke block, 4 September 1998

1.49 Wai 755
A claim lodged by Tureiti Stockman and others concerning Rangiwaea Island, 10 September

1.50 Wai 773
A claim lodged by Tureiti Stockman concerning lot 210 of the parish of Te Puna, 2 January 1999

1.51 Wai 778
A claim lodged by Tewiremu Mataia (Nicholls) on behalf of Te Runanga a Iwi o Ngati Tamatera concerning Ngati Tamatera land and taonga, 12 November 1998

1.52 Wai 807
A claim lodged by Desmond Tata and another concerning Motiti Island, 28 August 1999

1.53 Wai 817
A claim lodged by Neil Hirama concerning the Whareroa 2G1A block, 24 February 1999

1.54 Wai 821
A claim lodged by Reginald Hodge concerning Maori customary fishing, 22 March 2000

1.55 Wai 853
A claim lodged by Peri Kohu and others concerning the Local Government Act 1974 and Tauranga land, 20 January 2000

1.56 Wai 854
A claim lodged by John Toma concerning Tuingara lot 7 on Matakana Island, 10 April 2000

1.57 Wai 454
A claim lodged by Walter Taipari and another concerning Marutuahu land, 26 April 1994
(a) Amendment to claim 1.57, 5 March 2001

1.58 Wai 812
A claim lodged by Clive Majurey concerning Marutuahu land and taonga, 21 January 2000
(a) Amendment to claim 1.58, 5 March 2001

1.59 Wai 938
A claim lodged by Te Karehana Wicks concerning Ngai Tauwhao land and resources, 23 May 2001

1.60 Wai 947
A claim lodged by Hori Ngatai concerning Ngati Kuku land, 19 October 2001

2. Papers in Proceedings

2.1 Letter from Anaru Kohu concerning consolidation of Wai 42 claims, 9 March 1987

2.2 Direction to reformulate Wai 42 claim, 6 May 1987

2.3 Direction to consolidate claims and appoint counsel for Wai 42, 30 September 1987

2.4 Direction to consolidate and register Wai 47 claim, 7 November 1988

2.5 Direction to consolidate claims, 1 December 1988

2.6 Direction to consolidate claims, 31 January 1989

2.7 Direction to consolidate claims, 17 December 1990
(a) Direction to register Wai 86 claim, 5 July 1989
(b) Notice of Wai 86 claim, 2 October 1989
(c) Direction to convene a conference to discuss urgency, 23 July 1990

2.8 Direction to release document A2, 24 September 1990

2.9 Direction to register Wai 162 claim, 28 September 1990

2.10 Notice of Wai 162 claim, 3 October 1990

2.11 Direction for conference, 17 December 1990

2.12 Letter from Bryan Tarawa concerning Tuapiro Point, 7 May 1991

2.13 Direction to appoint counsel and constitute Tribunal, 13 June 1991

2.14 Direction to consolidate Wai 42, Wai 208, Wai 209, Wai 210, Wai 211 and Wai 47 claims, 24 June 1991

2.15 Direction to register Wai 228 claim, 12 September 1991

2.16 Direction to register Wai 266 claim, 19 December 1991

2.17 Further notice of Wai 162 claim, 28 February 1992

2.18 Direction to register amendment to Wai 266 claim, 2 February 1993

2.19 Direction to register Wai 336 claim, 4 March 1993

2.20 Notice of Wai 336 claim, 4 March 1993
(a) Notice of intention to make submissions from Tauranga Electric Power Board, 23 March 1993

2.21 Direction to register Wai 342 claim, 8 April 1993

2.22 Notice of Wai 342 claim, 13 April 1993

2.23 Direction to release report by Anita Miles and consolidate Wai 162 claim with Wai 215 claim, 10 May 1993

2.24 Direction to register Wai 353 claim, 30 June 1993

2.25 Application for urgent hearing, 8 July 1993

2.26 Direction to register Wai 360 claim, 12 July 1993

2.27 Direction to release document A7, 13 July 1993

2.28 Direction to register Wai 356 claim, 13 July 1993

2.29 Direction concerning request for urgency, 14 July 1993

2.30 Direction to register Wai 362 claim, 14 July 1993

2.31 Notice of Wai 356 claim, 15 July 1993

2.32 Direction to register Wai 365 claim, 4 August 1993
(a) Direction to register Wai 370 claim, 9 August 1993
(b) Notice of Wai 370 claim, 16 August 1993

2.33 Direction to register Wai 383 claim, 13 September 1993

2.34 Notice of Wai 383 claim, 15 September 1993

2.35 Direction to register amendment to Wai 353 claim, 26 November 1993

2.36 Direction concerning Wai 159 claim, 10 February 1994

2.37 Direction to register Wai 465claim, 27 February 1995

2.38 Notice of Wai 465 claim, 3 March 1995

2.39 Direction to register amendment to Wai 365 claim, 24 March 1995

2.40 Direction to register amendment to Wai 228 claim, 6 April 1995

2.41 Direction to register amendment to Wai 356 claim, 6 April 1995

2.42 Direction to register Wai 489 claim, 7 April 1995

2.43 Notice of Wai 356 claim, 12 April 1995

2.44 Direction to register Wai 497 claim, 13 April 1995

2.45 Direction to register Wai 503 claim, 11 May 1995

2.46 Submissions of counsel for Bay of Plenty Polytechnic concerning application for urgent hearing, 30 May 1995

2.47 Direction to release document A9, 2 June 1995

2.48 Direction to register Wai 522 claim, 26 June 1995

2.49 Direction to register Wai 227 claim, 12 September 1991

2.50 Direction to register Wai 540 claim, 31 August 1995

2.51 Notice of Wai 540 claim, 5 September 1995

2.52 Direction to register Wai 546 claim, 20 September 1995
(a) Notice of Wai 546 claim, 26 September 1995

2.53 Direction to register Wai 211 claim, 4 October 1995
(a) Direction to release document A26, 13 December 1995

2.54 Direction to withdraw Wai 209 claim, 26 January 1996

2.55 Direction to withdraw Wai 356 claim, 26 January 1996

2.56 Direction to register addition to Wai 489 claim, 26 January 1996

2.57 Notice of Wai 489 claim, 30 January 1996

2.58 Direction to release document A12, 9 February 1996

2.59 Direction to register Wai 580 claim, 29 March 1996

2.60 Notice of Wai 580 claim, 9 April 1996

2.61 Direction to register Wai 603 claim, 19 July 1996

2.62 Notice of Wai 603 claim, 23 July 1996

2.63 Direction to register addition to Wai 546 claim, 2 August 1996

2.64 Notice of addition to Wai 546 claim, 13 August 1996

2.65 Direction to consolidate Wai 336 claim with Wai 215 claim, 8 August 1996

2.66 Direction to register Wai 611 claim, 28 August 1996

2.67 Notice of Wai 611 claim, 2 September 1996

2.68 Direction to release document A19, 11 September 1996

2.69 Direction to release document A26, 14 October 1996

2.70 Direction to release document A27, 1 November 1996

2.71 Direction to register Wai 636 claim, 18 November 1996

2.72 Notice of Wai 636 claim, 21 November 1996

2.73 Direction to register Wai 637 claim, 20 November 1996

2.74 Notice of Wai 637 claim, 25 November 1996

2.75 Direction to release document A31, 20 December 1996

2.76 Direction to release document A30, 20 December 1996

2.77 Direction to release document A32, 20 December 1996

2.78 Direction to release document A33, 20 December 1996

2.79 Direction to release document A34, 19 December 1996

2.80 Direction to release document A35, 20 December 1996

2.81 Direction to release document A36, 9 December 1996

2.82 Direction to release document A37, 20 December 1996

2.83 Direction to register Wai 645 claim, 15 January 1997

2.84 Notice of Wai 645 claim, 17 January 1997

2.85 Direction to register Wai 650 claim, 28 January 1997

2.86 Notice of Wai 650 claim, 30 January 1997

2.87 Direction to register Wai 659 claim, 10 March 1997

2.88 Notice of Wai 659 claim, 10 March 1997

2.89 Direction to release document A43, 14 April 1997

2.90 Direction to register Wai 664 claim, 16 April 1997

2.91 Notice of Wai 664 claim, 22 April 1997

2.92 Direction to release document A44, 23 April 1997

2.93 Direction to release document A45, 23 April 1997

2.94 Direction to register Wai 668 claim, 30 April 1997

2.95 Notice of Wai 668 claim, 1 April 1997

2.96 Direction to register Wai 672 claim, 7 May 1997

2.97 Notice of Wai 672 claim, 13 May 1997

2.98 Direction to release document A46, 20 May 1997

2.99 Direction to release document A48, 10 June 1997

2.100 Direction to release document A49, 13 June 1997

2.101 Direction to register amendment to Wai 540 claim, 17 June 1997

2.102 Notice of amendment to Wai 540 claim, 19 June 1997

2.103 Direction to release document A50, 3 July 1997

2.104 Direction to release document A50, 3 July 1997

2.105 Direction to release document A50, 3 July 1997

2.106 Direction to release document S50, 3 July 1997

2.107 Direction to release document A51, 4 July 1997
(a) Direction to consolidate Wai 86 claim with Wai 215 claim, 11 July 1997

2.108 Direction to release Rachael Willan report, 6 August 1997

2.109 Letter from Office of Treaty Settlements containing schedule of land held within the Crown's settlement portfolio for Tauranga, 31 July 1997

2.110 Direction to constitute Tribunal, 21 August 1997

2.111 Application for urgency, 26 September 1997

2.112 Memorandum on behalf of Wai 659 claimants concerning application for urgency, 26 September 1997

2.113 Direction to register addition to Wai 211 claim, 27 September 1997

2.114 Letter withdrawing application for urgency, 13 October 1997

2.115 Memorandum on behalf of Wai 659 claimants concerning judicial conference, 21 October 1997

2.116 Direction to register addition to Wai 645 claim, 6 November 1997

2.117 Direction to register addition to Wai 211 claim, 10 November 1997

2.118 Memorandum on behalf of Wai 42(a), Wai 228, Wai 266, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, and Wai 854 claimants concerning judicial conference, 24 November 1997

2.119 Memorandum on behalf of Crown concerning appointment of Tribunal member to Tauranga inquiry, 12 December 1997

2.120 Memorandum on behalf of Wai 42(a), Wai 228, Wai 266, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, and Wai 854 claimants concerning appointment of Tribunal member to Tauranga inquiry, 15 December 1997

2.121 Memorandum on behalf of Wai 659 claimants concerning appointment of Tribunal member to Tauranga inquiry, 24 December 1997

2.122 Memorandum on behalf of Crown concerning hearing of legal issues relating to Tribunal appointment, 13 January 1998

2.123 Direction to register addition to Wai 211 claim, 17 January 1998

2.124 Notice of addition to Wai 211 claim, 20 January 1998

2.125 Memorandum on behalf of Wai 211 and Wai 227 claimants concerning appointment of Tribunal member to Tauranga inquiry, 19 January 1998

2.126 Letter from Toa Faulkner concerning appointment of Tribunal member to Tauranga inquiry, 19 January 1998

2.127 Affidavit of Professor Keith Sorrenson concerning his appointment to Tauranga Tribunal, 17 December 1997

2.128 Submissions on behalf of Wai 659 concerning appointment of Tribunal member to Tauranga inquiry, 28 January 1998

2.129 Submissions on behalf of Wai 42(c) and Wai 522 claimants concerning appointment of Tribunal member to Tauranga inquiry, 28 January 1998

2.130 Memorandum on behalf of Wai 636 claimants concerning appointment of Tribunal member to Tauranga inquiry, 28 January 1998

2.131 Submissions on behalf of Crown concerning appointment of Tribunal member to Tauranga inquiry, 28 January 1998
(a) Supplementary submissions, various dates
(b) Supporting documents to paper 2.131, various dates
(c) Supporting documents to paper 2.131, various dates
(d) Supporting documents to paper 2.131, various dates
(e) Supporting documents to paper 2.131, various dates

2.132 Memorandum on behalf of Wai 489 claimants concerning appointment of Tribunal member to Tauranga inquiry, 29 January 1998

2.133 Submissions on behalf of Wai 211 and Wai 227 claimants concerning appointment of Tribunal member to Tauranga inquiry, 30 January 1998

2.134 Submissions on behalf of Wai 42(a), Wai 228, Wai 266, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, and Wai 854 claimants concerning appointment of Tribunal member to Tauranga inquiry, 30 January 1998

2.135 Affidavit of Monte Ohia concerning appointment of Tribunal member to Tauranga inquiry, 30 January 1998

2.136 Memorandum on behalf of Wai 546 claimants concerning appointment of Tribunal member to Tauranga inquiry, 23 January 1998

2.137 Tribunal memorandum concerning appointment of member to Tauranga inquiry, 9 February 1998

2.138 Notice of hearing, 9 February 1998

2.139 Dispatch notice of hearing, 11 February 1998

2.140 Direction to register addition to Wai 211 claim, 4 February 1998

2.141 Direction concerning cross-examination of historical witnesses, 13 February 1998

2.142 Notice of addition to Wai 211 claim, 17 February 1998

2.143 Direction to release document A60, 5 February 1998

2.144 Direction to register Wai 701 claim, 20 February 1998

2.145 Notice of Wai 701 claim, 10 March 1998

2.146 Direction to register addition to Wai 546 claim, 10 February 1998

2.147 Notice of addition to Wai 546 claim, 12 February 1998

2.148 Direction to register Wai 702 claim, 27 February 1998

2.149 Notice of Wai 702 claim, 13 March 1998

2.150 Memorandum on behalf of Trust Power concerning interest in Wai 336, Wai 362, Wai 503, and Wai 659 claims, 6 March 1998

2.151 Direction to register Wai 707 claim, 25 March 1998

2.152 Notice of Wai 707 claim, 31 March 1998

2.153 Direction to register Wai 708 claim, 25 March 1998

2.154 Notice of Wai 708 claim, 31 March 1998

2.155 Direction to release document A76, 18 March 1998

2.156 Memorandum on behalf of Crown concerning judicial conference, 8 April 1998

2.157 Memorandum on behalf of Wai 227 claimants concerning judicial conference, 9 April 1998

2.158 Direction to release document A77, 7 April 1998

2.159 Notice of hearing, 5 May 1998

2.160 Dispatch notice of hearing, 7 May 1998

2.161 Direction to register amendment to Wai 227 claim, 6 May 1998

2.162 Notice of amendment to Wai 227 claim, 14 May

2.163 Direction to release document B3, 9 May 1998

2.164 Direction to release document B4, 9 May 1998

2.165 Direction to register Wai 714 claim, 6 May 1998

2.166 Direction to register Wai 715 claim, 12 May 1998

2.167 Direction to register Wai 717 claim, 18 May 1998

2.168 Notice of Wai 717 claim, 26 May 1998

2.169 Notice of Wai 714 claim, 21 May 1998

2.170 Notice of Wai 715 claim, 3 June 1998

2.171 Memorandum on behalf of Wai 707 claimants concerning hearing procedure, 15 May 1998

2.172 Direction to register Wai 727 claim, 25 June 1998

2.173 Notice of Wai 727 claim, 9 June 1998

2.174 Direction to withdraw Wai 383 claim, 23 July 1998

2.175 Direction concerning readiness to proceed to hearing, 22 July 1998
(a) Memorandum on behalf of Wai 727 claimants concerning readiness to proceed to hearing, 7 August 1998
(b) Memorandum on behalf of Wai 636 claimants concerning readiness to proceed to hearing, 7 August 1998
(c) Memorandum on behalf of Wai 42(c) and Wai 522 claimants concerning readiness to proceed to hearing, 10 August 1998
(d) Memorandum on behalf of Wai 489 claimants concerning readiness to proceed to hearing, 10 August 1998
(e) Memorandum on behalf of Wai 503 claimants concerning readiness to proceed to hearing, 13 August 1998
(f) Memorandum on behalf of Wai 540 claimants concerning readiness to proceed to hearing, 13 August 1998
(g) Memorandum on behalf of Wai 659 and Wai 664 claimants concerning readiness to proceed to hearing, 18 August 1998
(h) Memorandum on behalf of Wai 717 claimants concerning readiness to proceed to hearing, 25 August 1998

2.176 Direction to release document C1, 20 July 1998

2.177 Direction to register addition to Wai 211 claim, 15 August 1998

2.178 Notice of addition to Wai 211 claim, 25 August 1998

2.179 Direction concerning filing of evidence, 1 October 1998

2.180 Direction to release document C2, 25 September 1998

2.181 Direction to register Wai 751 claim, 15 October 1998

2.182 Notice of Wai 751 claim, 22 October 1998

2.183 Notice of hearing, 29 October 1998

2.184 Dispatch notice of hearing, 29 October 1998

2.185 Direction to register Wai 755 claim, 30 October 1998

2.186 Notice of Wai 755 claim, 6 November 1998

2.187 Memorandum on behalf of Crown concerning claimant evidence, 3 November 1998
(a) Memorandum on behalf of Crown concerning claimant evidence, 12 November 1998

2.188 Memorandum on behalf of Wai 42(a) claimants concerning research, 23 December 1998

2.189 Direction to register Wai 773 claim, 29 January 1999

2.190 Notice of claim for Wai 773 claim, 3 February 1999

2.191 Memorandum on behalf of Wai 42(a), Wai 228, Wai 266, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, and Wai 854 claimants concerning judicial conference, 9 February 1999

2.192 Direction to release document D2, 1 February 1999

2.193 Memorandum on behalf of Crown concerning research, 27 January 1999

2.194 Memorandum on behalf of Wai 211 and Wai 227 claimants concerning judicial conference, 11 February 1999

2.195 Memorandum on behalf of Wai 707 claimants concerning judicial conference, 16 February 1999

2.196 Letter from Hoki Leef-Bruce withdrawing as claimant for Wai 708, 17 February 1999

2.197 Direction to withdraw Hoki Leef-Bruce as named claimant for Wai 708, 18 February 1999

2.198 Memorandum on behalf of Crown concerning generic issues, 8 March 1999

2.199 Letter from Toa Faulkner withdrawing as claimant for Wai 370, 17 February 1999

2.200 Letter from Taumatangi Keno and Tane Heke-Kaiawha concerning new claimants for Wai 370, 15 February 1999

2.201 Direction to withdraw Toa Faulkner as named claimant for Wai 370, 15 March 1999

2.202 Direction to consolidate Wai 443 claim with Wai 215 claim, 15 March 1999

2.203 Direction concerning issues discussed at judicial conference, 19 March 1999

2.204 Direction concerning filing of evidence, 13 April 1999

2.205 Direction to release document D6, 9 April 1999

2.206 Direction to release document D5, 15 April 1999

2.207 Direction to register addition to Wai 715 claim, 22 April 1999

2.208 Direction to release document D7, 15 April 1999

2.209 Notice of hearing, 5 May 1999

2.210 Dispatch notice of hearing, 5 May 1999

2.211 Direction to release document D25, 28 April 1999

2.212 Memorandum on behalf of Wai 672 claimants concerning evidence of Mere Balzer, 11 May 1999

2.213 Direction to release document D26, 30 April 1999

2.214 Direction to register Wai 778 claim and concolidate with Wai 215, Wai 406, and Wai 686, 31 March 1999

2.215 Notice of Wai 778 claim, 16April 1999

2.216 Direction to register amendment to Wai 672 and Wai 503 claims, 16 May 1999

2.217 Letter from Toa Faulkner withdrawing as claimant for Wai 342, 27 April 1999

2.218 Letter from Tane Heke-Kaiawha concerning new claimant for Wai 342, 29 April 1999

2.219 Direction to withdraw Toa Faulkner as named claimant for Wai 342, 16 May 1999

2.220 Direction concerning filing of evidence, 20 May 1999

2.221 Direction to release document E1, 20 May 1999

2.222 Direction to register addition to Wai 715 claim, 20 May 1999

2.223 Notice of hearing, 17 June 1999

2.224 Dispatch notice of hearing, 21 June 1999

2.225 Memorandum on behalf of Wai 636 claimants concerning change of counsel, 15 June 1999

2.226 Direction to release document F1, 29 June 1999

2.227 Application for urgency on behalf of Wai 664 claimants, 1 September 1999

2.228 Memorandum on behalf of Wai 664 claimants concerning application for urgency, 1 September 1999

2.229 Direction to release document F2, 30 August 1999

2.230 Memorandum on behalf of Wai 636 claimants concerning hearing schedule, 2 September 1999

2.231 Memorandum on behalf of Wai 342 claimants concerning hearing schedule, 3 September 1999

2.232 Memorandum on behalf of Wai 489 claimants concerning hearing schedule, 2 September 1999

2.233 Direction concerning filing of submissions for hearing, 24 September 1999

2.234 Direction concerning allocation of hearings, 24 September 1999

2.235 Direction to register amendment to Wai 717 claim, 24 September 1999

2.236 Direction concerning deferral of hearings, 11 October 1999

2.237 Memorandum on behalf of Wai 727 claimants concerning judicial conference, 1 September 1999

2.238 Memorandum on behalf of Wai 540 claimants concerning hearing allocation, 18 November 1999

2.239 Notice of hearing of application to extend inquiry district, 30 November 1999

2.240 Dispatch notice of hearing, 1 December 1999

2.241 Memorandum on behalf of Crown concerning application to extend inquiry district, 7 December 1999

2.242 Memorandum on behalf of Wai 342 claimants concerning application to extend inquiry district, 8 December 1999

2.243 Memorandum on behalf of Wai 370 claimants concerning application to extend inquiry district, 9 December 1999

2.244 Memorandum on behalf of Wai 540 claimants concerning application to extend inquiry district, 8 December 1999

2.245 Memorandum on behalf of Wai 342 claimants concerning extension for filing submissions, 7 December 1999

2.246 Memorandum on behalf of Wai 717 and Wai 362 claimants concerning application to extend inquiry district, 9 December 1999

2.247 Direction to release document F11, 14 December 1999

2.248 Notice of hearing, 28 January 2000

2.249 Dispatch notice of hearing, 28 January 2000

2.250 Direction to release document F14, 14 January 2000

2.251 Direction to release document F29, 20 January 2000

2.252 Direction concerning filing dates for evidence, 16 February 2000

2.253 Notice of hearing, 16 March 2000

2.254 Dispatch notice of hearing, 16 March 2000

2.255 Direction to release document G18, 11 March 2000

2.256 Memorandum of Tribunal containing findings on application to extend inquiry boundary, 20 March 2000

2.257 Direction to register Wai 807 claim, 25 February 2000

2.258 Direction concerning filing of evidence, 5 April 2000

2.259 Notice of Wai 807 claim, 17 April 2000

2.260 Direction to register Wai 817 claim, 22 March 2000

2.261 Notice of Wai 817 claim, 19 April 2000

2.262 Direction to register Wai 821 claim, 22 March 2000

2.263 Notice of Wai 821 claim, 20 April 2000

2.264 Direction to register amendment to Wai 636 claim, 4 May 2000

2.265 Notice of amendment to Wai 636 claim, 8 May 2000

2.266 Notice of hearing, 15 May 2000

2.267 Dispatch notice of hearing, 15 May 2000

2.268 Memorandum on behalf of Wai 546 claimants concerning confidentiality, 15 May 2000

2.269 Direction concerning filing of evidence, 11 May 2000

2.270 Memorandum on behalf of Wai 636 concerning return of land under the Public Works Act 1981, 12 May 2000

2.271 Memorandum on behalf of Crown concerning memorandum on behalf of Wai 546 claimants, 22 May 2000

2.272 Direction to register amendement to Wai 546 claim, 23 May 2000

2.273 Notice of amendment to Wai 546 claim, 26 May 2000

2.274 Memorandum on behalf of Wai 717 claimants concerning filing dates, 24 May 2000

2.275 Memorandum on behalf of Crown concerning memorandum on behalf of Wai 717 claimants, 25 May 2000

2.276 Further memorandum on behalf of Crown in response to memorandum on behalf of Wai 717 claimants, 12 June 2000

2.277 Notice of hearing, 15 June 2000

2.278 Dispatch notice of hearing, 15 June 2000

2.279 Notice of deferral of hearing, 21 June 2000

2.280 Dispatch notice of deferral of hearing, 21 June 2000

2.281 Direction to register amedment to Wai 370 claim, 12 June 2000

2.282 Direction to register Wai 853 claim, 28 June 2000

2.283 Notice of Wai 853 claim, 3 July 2000

2.284 Direction to register Wai 854 claim, 28 June 2000

2.285 Notice of Wai 854 claim, 4 July 2000

2.286 Direction concerning hearing programme and close-off dates, 8 August 2000

2.287 Direction concerning filing of evidence, 8 August 2000

2.288 Direction concerning Tauranga Moana hearing process, 17 August 2000

2.289 Memorandum on behalf of Crown concerning direction of Tribunal, 28 August 2000

2.290 Notice of hearing, 21 September 2000

2.291 Dispatch notice of hearing, 21 September 2000

2.292 Memorandum on behalf of Wai 540 claimants concerning direction of Tribunal, 19 September 2000

2.293 Memorandum on behalf of Wai 659 claimants concerning direction of Tribunal, 20 September 2000

2.294 Memorandum on behalf of Wai 727 claimants concerning direction of Tribunal, 20 September 2000

2.295 Memorandum on behalf of Wai 211 claimants concerning direction of Tribunal, 20 September 2000

2.296 Memorandum on behalf of Wai 228, Wai 266, and Wai 854 claimants concerning direction of Tribunal, 19 September 2000

2.297 Memorandum on behalf of Wai 342 claimants concerning direction of Tribunal, 21 September 2000

2.298 Memorandum on behalf of Wai 664 claimants concerning direction of Tribunal, 21 September 2000

2.299 Direction concerning memorandums on behalf of claimants and Crown, 3 October 2000

2.300 Direction concerning filing of evidence, 3 October 2000

2.301 Direction to register amendment to Wai 540 claim, 23 September 2000

2.302 Letter from Hauraki Maori Trust Board in response to Tribunal direction, undated

2.303 Memorandum on behalf of Wai 42(c) and Wai 522 claimants concerning Tribunal direction, 9 October 2000

2.304 Memorandum of counsel for Wai 266, Wai 715, Wai 755, and Wai 807 claimants concerning Tribunal direction, 27 September 2000

2.305 Memorandum on behalf of Crown concerning cross-examination of witnesses, 26 October 2000

2.306 Memorandum on behalf of Wai 664 claimants concerning issues in Waitaha claim, 26 October 2000

2.307 Memorandum on behalf of Wai 540 claimants concerning Tribunal direction, 31 October 2000

2.308 Direction concerning filing of evidence, 2 November 2000

2.309 Dispatch notice of hearing, 28 November 2000

2.310 Direction to register amendment to Wai 228 claim, 21 December 2000

2.311 Memorandum on behalf of Wai 755 and Wai 807 claimants concerning Tribunal direction, 13 December 2000

2.312 Notice of amendment to Wai 228 claim, 16 January 2000

2.313 Notice of postponement of hearing, 23 January 2001

2.314 Direction to release document K1, 18 January 2001

2.315 Direction release document K2, 18 January 2001

2.316 Direction concerning filing of evidence, 1 February 2001

2.317 Direction to register amendment to Wai 342 claim, 3 February 2001
(a) Notice of amendment to Wai 342 claim, 8 February 2001

2.318 Notice of hearing, 14 February 2001

2.319 Direction concerning completion of first stage of inquiry, 9 February 2001

2.320 Memorandum on behalf of Wai 637 claimants concerning hearing allocation, 15 February 2001

2.321 Direction concerning hearing, 28 February 2001

2.322 Direction to release document L2, 28 February 2001

2.323 Directionto release document L1, 12 March 2001

2.324 Directionto release document L3, 12 March 2001

2.325 Memorandum on behalf of Crown concerning evidence of Ann Parsonson, 9 March 2001

2.326 Notice of hearing, 14 March 2001

2.327 Direction concerning Wai 637 hearing allocation, 16 March 2001

2.328 Memorandum on behalf of Wai 42(c) and Wai 522 claimants concerning Crown memorandum, 16 March 2001

2.329 Memorandum on behalf of Wai 637 claimants concerning hearing allocation, 28 March 2001

2.330 Letter from Taane Karaka on behalf of Wai 702 claimants concerning Waitaha research, 22 March 2001

2.331 Memorandum on behalf of Wai 342 claimants concerning research, 2 April 2001

2.332 Direction to register amendment to Wai 454 and Wai 812 claims, 21 March 2001

2.333 Notice of amendment to Wai 812 claim, 17 April 2001

2.334 Notice of amendment to Wai 454 claim, 17 April 2001

2.335 Direction to release document M2, 19 April 2001

2.336 Direction to register amendment to Wai 727 claim, 27 April 2001

2.337 Memorandum on behalf of Wai 650 claimants concerning hearing allocation, 30 April 2001

2.338 Direction to release document M3, 7 May 2001

2.339 Direction concerning Wai 650 hearing allocation, 12 May 2001

2.340 Memorandum on behalf of Wai 362 claimants concerning filing of evidence, 23 May 2001

2.341 Memorandum on behalf of Wai 454 and Wai 812 claimants concerning hearing allocation, 30 May 2001

2.342 Direction to release document M4, 15 June 2001

2.343 Memorandum on behalf of Wai 362 claimants concerning raupatu issues, 1 August 2001

2.344 Direction to register amendment to Wai 727 claim, 6 August 2001

2.345 Notice of amendment to Wai 727 claim, 9 August 2001

2.346 Direction concerning filing of evidence, 8 August 2001

2.347 Memorandum on behalf of Wai 489 claimants seeking leave to file memorandum on raupatu issues, 16 August 2001

2.348 Memorandum on behalf of Wai 650 claimants concerning hearing venue, 23 August 2001

2.349 Direction concerning memorandum on behalf of Wai 650 claimants, 24 August 2001

2.350 Further memorandum on behalf of Wai 650 claimants concerning hearing venue, 28 August 2001

2.351 Memorandum on behalf of Wai 637 claimants concerning hearing schedule, 30 August 2001

2.352 Memorandum on behalf of Wai 489 claimants concerning raupatu issues, 31 August 2001

2.353 Memorandum on behalf of Wai 938 claimants concerning consolidation of claim with Wai 215, 4 September 2001

2.354 Direction to register change to named claimant for Wai 489, 3 September 2001

2.355 Direction to register amendment to Wai 489 claim, 3 September 2001

2.356 Notice of change to named claimant for Wai 489, 4 September 2001

2.357 Notice of amendment to Wai 489 claim, 4 September 2001

2.358 Memorandum on behalf of Wai 650 claimants concerning filing of evidence, 13 September 2001

2.359 Memorandum on behalf of Wai 637 claimants concerning filing of evidence, 13 September 2001

2.360 Direction to register amendment to Wai 362 claim, 7 September 2001

2.361 Notice of amendment to Wai 362 claim, 13 September 2001

2.362 Memorandum on behalf of Wai 637 claimants concerning filing of evidence, 20 September 2001

2.363 Crown statement of response (stage 1 raupatu issues), 20 September 2001

2.364 Direction to register amendment to Wai 362 claim, 26 September 2001

2.365 Notice of amendment to Wai 362 claim, 3 October 2001

2.366 Direction to consolidate Wai 938 claim with Wai 215 claim, 26 September 2001

2.367 Direction to register amendment to Wai 637 claim, 2 October 2001

2.368 Notice of amendment to Wai 637 claim, 3 October 2001

2.369 Direction to register Wai 938 claim, 13 August 2001

2.370 Notice of Wai 938 claim, 14 August 2001

2.371 Memorandum on behalf of Wai 362, Wai 717, and Wai 947 claimants concerning Crown statement of response, 4 October 2001

2.372 Memorandum on behalf of Wai 714 claimants concerning evidence of Tony Walzl, 5 October 2001

2.373 Direction concerning hearing of closing submissions on raupatu, 24 October 2001

2.374 Letter fom Nga Kaitiaki o Ngati Kahu concerning change of claimant name for Wai 42(a) claim, 16 October 2001

2.375 Direction to register amendment to Wai 650 claim, 18 October 2001

2.376 Notice of amendment to Wai 650 claim, 30 October 2001

2.377 Direction concerning completion of stage 1 of inquiry, 26 October 2001

2.378 Memorandum on behalf of Wai 211 and Wai 227 claimants concerning transcripts from Crown hearing, 29 October 2001

2.379 Facsimile from Toahaere Faulkner concerning submissions on behalf of Wai 535 claimants, 30 October 2001

2.380 Memorandum on behalf of Wai 42(a), Wai 228, Wai 266, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, and Wai 854 claimants concerning closing submissions, 31 October 2001

2.381 Memorandum on behalf of Wai 755 and Wai 807 claimants concerning closing submissions, 31 October 2001

2.382 Letter from Ngati Ranginui Iwi Society concerning closing submissions, 1 November 2001

2.383 Memorandum on behalf of Wai 659 and Wai 664 claimants concerning closing submissions, 1 November 2001

2.384 Memorandum on behalf of Wai 100, Wai 454, Wai 650, and Wai 812 claimants concerning closing submissions, 1 November 2001

2.385 Memorandum on behalf of Wai 362, Wai 717, and Wai 947 claimants concerning closing submissions, 1 November 2001

2.386 Memorandum on behalf of Wai 42(c) and Wai 522 claimants concerning closing submissions, 1 November 2001

2.387 Memorandum on behalf of Tauranga District Council concerning closing submissions, 31 October 2001

2.388 Joint memorandum on behalf of claimants concerning filing and hearing of closing submissions, 9 November 2001

2.389 Memorandum on behalf of Wai 42(c) and Wai 522 claimants concerning evidence of Robyn Anderson, 8 November 20002

2.390 Memorandum on behalf of Crown concerning joint memorandum, 9 November 2001

2.391 Memorandum on behalf of Wai 342 claimants concerning closing submissions, 9 November 2001

2.392 Facsimile from Toa Faulkner concerning Wai 489 closing submissions, 30 October 2001

2.393 Memorandum on behalf of Wai 546 claimants concerning closing submissions, 9 November 2001

2.394 Memorandum on behalf of Wai 342 claimants concerning closing submissions, 12 November 2001

2.395 Direction concerning closing submissions for stage 1 of inquiry, 16 November 2001

2.396 Notice of hearing, 26 November 2001

2.397 Memorandum on behalf of Wai 707 claimants concerning closing submissions, 14 November 2001

2.398 Memorandum on behalf of Wai 727 claimants concerning closing submissions, 15 November 2001

2.399 Memorandum on behalf of Wai 650 claimants concerning evidence of Robyn Anderson, 16 November 2001

2.400 Memorandum on behalf of Wai 714 claimants concerning evidence related to Hauraki claims, 22 November 2001

2.401 Direction concerning named claimant for Wai 489, 28 November 2001

2.402 Direction to register Wai 947 claim, 29 November 2001

2.403 Notice of Wai 947 claim, 30 November 2001

2.404 Notice of hearing, 23 January 2002

2.405 Letter from Toa Faulkner concerning named claimant for Wai 489, undated

2.406 Direction to register amendment to Wai 42(a) claim, 30 November 2001

2.407 Notice of amendment to Wai 42(a) claim, 14 February 2002

2.408 Direction to register amendment to Wai 664 claim, 7 February 2002

2.409 Notice of amendment to Wai 664 claim, 15 February 2002

2.410 Direction concerning submissions in reply to Crown closing submissions, 27 February 2002

2.411 Letter from Toa Faulkner concerning closing submissions, 18 March 2002

2.412 Direction to register addition to Wai 42(c) and Wai 522 claims, 12 March 2002

2.413 Notice of addition to Wai 42(c) and Wai 522 claims, 25 March 2002

2.414 Direction to release document P14, 10 April 2002

2.415 Memorandum on behalf of Wai 664 claimants concerning status of Waitaha in inquiry and negotiations with Crown, 15 May 2002

2.416 Joint memorandum on behalf of claimants concerning progress of inquiry, 16 April 2003

2.417 Direction to release document K2, 5 May 2003

2.418 Letter on behalf of owners of Mangatawa–Papamoa blocks concerning status of inquiry, 6 May 2003

2.419 Direction concerning completion of stage 1 of inquiry, 6 June 2002

2.420 Letter on behalf of Ngati Ranginui, Ngaiterangi and Ngati Pukenga concerning application for urgency to hear foreshore and seabed issues, 9 September 2003

2.421 Joint memorandum on behalf of claimants concerning stage 2 of the inquiry, 15 July 2004

2.422 Direction concerning joint memorandum on behalf of claimants, 23 July 2004

3. Research Commissions

3.1 Direction commissioning Sam Rolleston and Des Kahotea to prepare research report, 15 November 1998

3.2 Direction commissioning Evelyn Stokes to prepare research report, undated

3.3 Direction commissioning Sam Rolleston and Des Kahotea to prepare research report, 9 February 1989

3.4 Direction commissioning Anita Miles to prepare research report, 25 February 1992

3.5 Direction commissioning Te Maire Tau to prepare research report, 14 June 1992

3.6 Direction commissioning Harris Martin to prepare research report, 30 June 1995

(a) Direction commissioning Heather Bassett to prepare research report, 2 August 1995

3.7 Direction commissioning Roimata Minhinnick to prepare research report, 17 November 1995

(a) Direction commissioning Roimata Minhinnick to prepare research report, 14 December 1995

(b) Direction commissioning Heather Bassett to prepare research report, 14 December 1995

(c) Direction commissioning Roimata Minhinnick to prepare research report, 14 December 1995

3.8 Direction commissioning Kere Cookson-Ua to prepare research report, 15 February 1996

3.9 Direction commissioning Puhirake Ihaka to prepare research report, 29 March 1996

3.10 Direction extending research commission of Heather Bassett, 29 March 1996

3.11 Direction commissioning Rachael Willan to prepare research report, 29 March 1996

3.12 Direction commissioning Phillip Hikairo to prepare research report, 19 April 1996

3.13 Direction commissioning Tony Nightingale to prepare research report, 30 April 1996

3.14 Direction extending research commission of Puhirake Ihaka, 7 June 1996

3.15 Direction commissioning Jonathon Easthope to prepare research report, 10 June 1996

3.16 Direction extending research commission of Rachael Willan, 19 July 1996

3.17 Direction commissioning Giselle Byrnes to prepare research report, 13 August 1996

3.18 Direction extending research commission of Phillip Hikairo, 28 August 1996

3.19 Direction commissioning Te Awanui Black to prepare research report, 6 September 1996

3.20 Direction commissioning Anthony Fisher to prepare research report, 6 September 1996

3.21 Direction commissioning Keni Piahana to prepare research report, 6 September 1996

3.22 Direction commissioning Rahera Ohia to prepare research report, 6 September 1996

3.23 Direction commissioning Jonathon Easthope to prepare research report, 26 September 1996

3.24 Direction commissioning Heather Bassett to prepare research report, 20 November 1996

3.25 Direction commissioning Rachael Willan to prepare research report, 10 December 1996

3.26 Direction amending research commission of Rachael Willan, 20 December 1996

3.27 Direction extending research commission of Anthony Fisher, 15 January 1997

3.28 Direction commissioning Heather Bassett to prepare research report, 15 January 1997

3.29 Direction extending research commission of Anthony Fisher, 14 January 1997

3.30 Direction commissioning Shane Ashby to prepare research report, 11 February 1997

3.31 Direction authorising Phillip Hikairo to commission Antoine Coffin and Des Kahotea to prepare research report, 14 February 1997

3.32 Direction amending research commission of Shane Ashby, 5 March 1997

3.33 Direction extending research commission of Roimata Minhinnick, 7 May 1997

3.34 Direction commissioning Rchael Willan to prepare research report, 21 May 1997

3.35 Direction commissioning Keni Piahana to prepare research report, 22 May 1997

3.36 Direction commissioning George Evans to prepare research report, 22 May 1997

3.37 Direction extending research commission of Rachael Willan, 30 May 1997

3.38 Direction commissioning Maru Samuels to prepare research report, 19 June 1997

3.39 Entry vacated

3.40 Entry vacated

3.41 Direction commissioning Keni Piahana and Tony Carlyle to prepare research report, 25 June 1997

3.42 Direction commissioning Keni Piahana and Tony Carlyle to prepare research report, 25 June 1997

3.43 Direction commissioning Robert McClean to prepare research report, 1 September 1997

3.44 Direction commissioning Paul Stanley to prepare research report, 25 September 1997

3.45 Direction commissioning Roimata Minhinnick to prepare research report, 25 September 1997

3.46 Direction commissioning Heather Bassett and Richard Kay to prepare research report, 25 September 1997

3.47 Direction extending research commission of Keni Piahana and Tony Carlyle to prepare research report, 4 December 1997

3.48 Direction extending research commission of Robert McClean to prepare research report, 4 December 1997

3.49 Direction extending research commission of Keni Piahana and Tony Carlyle to prepare research report, 4 December 1997

3.50 Direction commissioning Roimata Minhinnick to prepare research report, 10 December 1997

3.51 Direction extending research commission of Robert McClean, 16 January 1998

3.52 Direction commissioning Hazel Riseborough to prepare research report, 16 January 1998

3.53 Direction extending research commission of Roimata Minhinnick, 5 February 1998

3.54 Direction extending research commission of Heather Bassett and Richard Kay, 5 February 1998

3.55 Direction extending research commission of Paul Stanley, 5 February 1998

3.56 Direction commissioning Keni Piahana to prepare research report, 17 March 1998

3.57 Entry vacated

3.58 Direction extending research commission of Roimata Minhinnick, 8 April 1998

3.59 Direction commissioning Robert McClean to prepare research report, 22 April 1998

3.60 Direction extending research commission of Roimata Minhinnick, 9 May 1998

3.61 Direction commissioning Rachael Willan to prepare research report, 29 July 1998

3.62 Direction commissioning Katherine Orr-Nimmo to prepare research report, 2 September 1998

3.63 Entry vacated

3.64 Direction commissioning Heather Bassett and Richard Kay to prepare research report, 11 September 1998

3.65 Direction commissioning Hoki Leef-Bruce to prepare research report, 22 September 1998

3.66 Direction commissioning Heather Bassett and Richard Kay to prepare research report, 27 October 1998

3.67 Direction extending research commission of Hoki Leef-Bruce, 6 November 1998

3.68 Direction cancelling research commission of Toa Faulkner, 9 November 1998

3.69 Direction cancelling research commission of Toa Faulkner, 9 November 1998

3.70 Direction commissioning Evaan Aramakutu to prepare research report, 14 December 1998

3.71 Direction commissioning Heather Bassett and Richard Kay to prepare research report, 4 February 1999

3.72 Direction extending research commission of Hoki Leef-Bruce, 18 Janurary 1999

3.73 Direction commissioning Duncan Moore to prepare research report, 11 February 1999

3.74 Direction commissioning Marinus La Rooij to prepare research report, 15 March 1999

3.75 Direction commissioning Marinus La Rooij to prepare research report, 22 April 1999

3.76 Direction commissioning Stephanie Taiapa to prepare research report, 29 April 1999

3.77 Direction commissioning Marinus La Rooij to prepare research report, 5 May 1999

3.78 Direction extending research commission of Marinus La Rooij, 25 June 1999

3.79 Direction extending research commission of Stephanie Taiapa, 18 August 1999

3.80 Direction commissioning Grant Young to prepare research report, 30 October 1999

3.81 Direction commissioning Marinus La Rooij to prepare research report, 15 November 1999

3.82 Direction commissioning Grant Young to prepare research report, 19 December 1999

3.83 Direction extending research commission of Stephanie Taiapa, 12 January 2000

3.84 Direction extending research commission of Duncan Moore, 27 January 2000

3.85 Direction commissioning Spencer Webster to authorise the commissioning of members of Ngai Te Ahi committee to transcribe interveiws, 29 February 2000

3.86 Direction extending research commission of Grant Young, 20 March 2000

3.87 Direction commissioning Ngati He research project, 10 April 2000

3.88 Direction commissioning Marinus La Rooij to prepare research report, 2 June 2000

3.89 Direction extending research commission of Stephanie Taiapa, 23 June 2000

3.90 Direction extending research commission of Ngati He, 6 July 2000

3.91 Direction extending research commission of Ngati He, 26 July 2000

3.92 Direction extending research commission of Ngati He, 13 November 2000

3.93 Direction cancelling research commission of Stephanie Taiapa, 13 November 2000

3.94 Direction commissioning Barry Rigby to prepare research report, 8 December 2000

3.95 Direction cancelling research commission of Keni Piahana, 22 November 2000

3.96 Direction commissioning Barry Rigby to prepare research report, 9 February 2001

3.97 Direction commissioning Russell Stone to prepare research report, 9 February 2001

3.98 Direction extending commission of Marinus La Rooij, 21 March 2001

3.99 Direction extending commission of Marinus La Rooij, 7 January 2002

4. Transcripts and Translations

4.1 Transcript of fourteenth hearing, 15–18 October 2001

RECORD OF DOCUMENTS

A Documents Received Prior to First Hearing

A1 Information concerning Otawa blocks, received from Department of Survey and Land Information, 13 October 1987

A2 Evelyn Stokes, 'Te Raupatu o Tauranga Moana: The Confiscation of Tauranga Lands', 2 vols, report commissioned by Waitangi Tribunal, 24 September 1990, vol 1

A3 The Tauranga Moana Maori Trust Board Act 1981

A4 Report to Tuapiro section owner, February 1991

A5 Waitangi Tribunal, comp, *Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990)

A6 Letter from Matiu Tarawa concerning tinorangatiratanga, undated

A7 Suzanne Woodley, *Tuhua (Mayor Island)*, Waitangi Tribunal Research Series, 1993, no 8
(a) Supporting documents to document A7, various dates

A8 Suzanne Woodley, *Matakana Island*, Waitangi Tribunal Research Series, 1993, no 5

A9 Anita Miles, *Kopukairoa : Tauranga Telecom Site*, Waitangi Tribunal Research Series, 1993, no 4

A10 McCaw, Lewis, and Chapman, 'Mount Maunganui Peninsula', 2 vols, report prepared on behalf of Wai 211 claimants, December 1992, vol 1
(a) Supporting documents to document A10, various dates
(b) Supporting documents to document A10, various dates
(c) Supporting documents to document A10, various dates
(d) Supporting documents to document A10, various dates

A11 Evelyn Stokes, 'Ngamanawa : A Study of Conflicts in the Use of Forest Land', 1983

A12 Roimata Minhinnick, 'Report on Kaitimako B and C Block Claim', report commissioned by Waitangi Tribunal, undated

A13 Vincent O'Malley and Alan Ward, 'Draft Historical Report on Tauranga Moana Lands', report prepared for Crown–Congress Joint Working Party, June 1993

A14 Richard Boast, 'Te Whanganui-a-Orotu 1851–1991 : A Legal History', brief of evidence on behalf of Wai 55 claimants (Wai 55 ROI, doc B1), June 1991

A15 Evelyn Stokes, 'Tauranga Moana : A Study of the Impact of Urban Growth on Rural Maori Communities', June 1980

A16 Des Kahotea, 'Taha Maori/Maori Perspectives : Western Bay of Plenty Urban Development study', May 1986

A17 Des Kahotea, 'Tauranga Urban Growth Strategy Cultural Resource Inventory : Features of Significance to the Maori Community (Tangata Whenua)', June 1992

A18 Evelyn Stokes, 'Te Raupatu o Tauranga Moana', 2 vols, report commissioned by Waitangi Tribunal, 1993, vol 2

A19 Heather Bassett, 'Otawa Scenic Reserve', report commissioned by Waitangi Tribunal, August 1996

A20 Beca Steven, 'Western Bay of Plenty Sewerage: Water Right Study of Bay of Plenty Ocean Foreshore Waters', June 1991

A21 Bioresearches, 'Biological Resources: Western Bay of Plenty Sewerage Water Right Study of Bay of Plenty Nearshore Ocean Waters', June 1991

A22 Vincent O'Malley, 'The Aftermath of the Tauranga Raupatu, 1864–1981', report commissioned by Crown Forestry Rental Trust, June 1995
(a) Supporting documents to document A22, various dates
(b) Supporting documents to document A22, various dates
(c) Supporting documents to document A22, various dates

A23 Hazel Riseborough, 'The Crown and Tauranga Moana, 1864–1868', report commissioned by Crown Forestry Rental Trust, October 1994

A24 Trust Power, 'Matakana Island Feeder and Submarine Cable Laying: Assessment of Environmental Effects', 30 August 1996

A25 Environment BOP, *Tauranga Harbour Regional Plan: Environmental Investigations, Water and Sediment Quality of Tauranga Harbour* (Whakatane: Environment BOP, 1994)

A26 Heather Bassset, 'Aspects of Urbanisation on Maungatapu and Hairini, Tauranga', report commissioned by Waitangi Tribunal, July 1996
(a) Supporting documents to document A26, various dates

A27 Kere Cookson-Ua, 'Te Awa-O-Tukorako and Whareroa Blocks', report commissioned by Waitangi Tribunal, June 1996

A28 Antoine Coffin, 'Wairoa River and Coastal Environment Issues and Options Paper', October 1995

A29 Vincent O'Malley, 'The Te Papa Block: A History of Church Missionary Society and Crown Dealings, 1838–1867', report commissioned by Crown Forestry Rental Trust, November 1996
(a) Supporting documents to document A29, various dates

A30 Rachael Willan, 'Katikati Railway Station', report commissioned by Waitangi Tribunal, September 1996

(a) Supporting documents to document A30, various dates

A31 Tony Nightingale, 'Tauranga Land Development Schemes, 1929–55', report commissioned by Waitangi Tribunal, November 1996

(a) Supporting documents to document A31, various dates

A32 Rachael Willan, 'Land Taken for Waterworks', report commissioned by Waitangi Tribunal, undated

(a) Supporting documents to document A32, various dates

A33 Rachael Willan, 'Wairoa River Report', report commissioned by Waitangi Tribunal, September 1996

(a) Supporting documents to document A33, various dates

A34 Johnathan Easthope, 'Public Works Acquisitions in Poike Block', report commissioned by Waitangi Tribunal, undated

(a) Supporting documents to document A34, various dates

A35 Rachael Willan, 'Hydro-electricty in the Wairoa River Catchment: Land Acquisition', report commissioned by Waitangi Tribunal, September 1996

(a) Supporting documents to document A35, various dates

A36 Giselle Byrnes, 'A Preliminary Report on the Use, Control and Management of the Tauranga Harbour', report commissioned by Waitangi Tribunal, undated

A37 Des Kahotea, 'Ngati Kahu, Ngati Rangi, Ngati Pango', report commissioned by Waitangi Tribunal, December 1996

(a) Part 1

(b) Part 2

A38 Kathryn Rose, 'The Impact of Confiscation: Socio-economic Conditions of Tauranga Maori, 1865–1965', report commissioned by Crown Forestry Rental Trust, January 1997

(a) Supporting documents to document A38, various dates

(b) Supporting documents to document A38, various dates

(c) Supporting documents to document A38, various dates

(d) Supporting documents to document A38, various dates

A38—*continued*
(e) Supporting documents to document A38, various dates
(f) Summary of document A38, undated

A39 Tony Nightingale, 'Tauranga Moana: A Social and Economic Impact Report, 1865–1960', report commissioned by Crown Forestry Rental Trust, March 1996
(a) Supporting documents to document A39, various dates

A40 Tony Nightingale, 'The Commissioners of Tauranga Lands, 1868–1886', report commissioned by Crown Forestry Rental Trust, November 1996
(a) Suporting documents to document A40, various dates

A41 Tony Nightingale, 'Re-housing Tauranga Maori, 1935–72', report commissioned by Crown Forestry Rental Trust, November 1996
(a) Supporting documents to document A41, various dates

A42 The Energy Companies Act 1992

A43 Rachael Willan, 'Otamataha', report commissioned by Crown Forestry Rental Trust March 1997
(a) Supporting documents to document A43, various dates

A44 Heather Bassett, 'Mangatawa', report commissioned by Waitangi Tribunal, December 1996

A45 Heather Bassett and Richard Kay, 'Huharua, Pukewhanake and Nga Kuri A Wharei', report commissioned by Waitangi Tribunal, December 1996

A46 Heather Bassett and Richard Kay, 'Otawhiwhi Reserve and Bowentown Domain', report commissioned by Waitangi Tribunal, December 1996

A47 Pirirakau Research Committee, 'Te Raupatu o te Pirirakau', report commissioned by Crown Forestry Rental Trust, March 1997
(a) Summary of document A47, undated

A48 Roimata Minhinnick, 'The Alienation of Moturiki, Motuotau and Karewa Islands', report commissioned by Waitangi Tribunal, undated

A49 Roimata Minhinnick, 'A Report on Mauao/Maunganui', report commissioned by Waitangi Tribunal, undated

A50 Anthony Fisher, Keni Piahana, Te Awankiarangi Black, and Rahera Ohia, 'The Issues Concerning the Use, Control and Management of Tauranga Harbour and its Estuaries', report commissioned by Waitangi Tribunal, undated

A51 Heather Bassett, Richard Kay, 'Case Studies of Crown Administration in Welcome Bay: A Report on the Papakanui Trust Claim', report commissioned by Waitangi Tribunal, April 1997
(a) Supporting documents to document A51, various dates

A52 Rachael Willan, 'Papamoa School Site', report commissioned by Waitangi Tribunal, June 1997
(a) Supporting documents to document A52, various dates

A53 Submissions by the Parliamentary Commissioner for the Environment on the Tauranga City Council (Waikareao Estuary Expressway) Empowering Bill, 19 June 1989

A54 Submissions by the Parliamentary Commissioner for the Environment on the Tauranga City Council (Waikareao Estuary Expressway) Empowering Bill, 21 July 1989

A55 Supplementary submissions by Parliamentary Commissioner for the Environment on the Tauranga City Council (Waikareao Estuary Expressway) Empowering Bill, 28 July 1989

A56 The Tauranga City Council (Waikareao Estuary Expressway) Empowering Bill 1989

A57 Evelyn Stokes, 'The Allocation of Reserves for Maori in the Tauranga Confiscated Lands', 2 vols, report commissioned by Waitangi Tribunal, 1997, vol 1
(a) Evelyn Stokes, 'The Allocation of Reserves for Maori in the Tauranga Confiscated Lands', 2 vols, report commissioned by Waitangi Tribunal, 1997, vol 2
(b) Summary of document A57, undated
(c) Supporting documents to document A57, various dates

A58 Summary of document A23, February 1998

A59 Summary of document A29, February 1998
(a) Summary of document A22, February 1998

A60 George Evans, 'Te whenua o Te Kupu Whakaari: Ngai Tame Rawhao', report commissioned by Waitangi Tribunal, October 1997
(a)–(k) Supporting documents to document A60, various dates

A61 Brief of evidence of Dutie Tukaokao, 23 February 1998

A62 Brief of evidence of Alex Tata, 23 February 1998

A63 Brief of evidence of Morehu Rahipere, 23 February 1998

A64 Brief of evidence of Mapunui Roretana, 23 February 1998

A65 Brief of evidence of Tawhiao Tukaki, 23 February 1998

A66 Entry vacated

A67 Brief of evidence of Taiawa Kuka, 23 February 1998

A68 Brief of evidence of Rahera Ohia, 23 February 1998

A69 Brief of evidence of Antoine Coffin, 23 February 1998

A70 Brief of evidence of Wiremu Nuku, 24 February 1998

A71 Brief of evidence of Kihi Ngatai, 24 February 1998

A72 Brief of evidence of Hauata Palmer, 24 February 1998

A73 Brief of evidence of Tureiti Stockman, 24 February 1998

A74 Brief of evidence of Eddie Ngatai, 24 February 1998

A75 Brief of evidence of Matiu Ellis, 24 February 1998

A76 Antoine Coffin, 'Changes in a Maori Community: Wairoa River Hapu of Tauranga', report commissioned by Waitangi Tribunal, November 1997
(a) Supporting documents to document A76, various dates

A77 Roimata Minhinnick, 'The Ownership of the Tauranga Moana', report commissioned by Waitangi Tribunal, undated

b Documents Received to End of First hearing

b1 Pirirakau Research Committee, 'The Te Puna Reserves and Lands Returned: Three Cases of Injustice Arising out of the Allocation Process', report to Waitangi Tribunal, April 1998

(a) Summary of document b1, undated

b2 John Koning, 'The Tauranga Bush Campaign, 1864–1870', report commissioned by Crown Forestry Rental Trust, April 1998

(a) Summary of document b2, undated

b3 Hazel Riseborough, 'Ngai Tamarawaho', scoping report commissioned by Waitangi Tribunal, April 1998

b4 Robert McClean, 'Matakana Island Sewerage Outfall', report commissioned by Waitangi Tribunal, January 1998

(a) Supporting documents to document b4, various dates

b5 Briefs of evidence on behalf of Pirirakau

b6 Brief of evidence of Mark Nicholas, 19 May 1998

b7 Brief of evidence of Atiria Ake, May 1998

(a) Supporting documents to document b7, various dates

b8 Map showing historical boundry of Whakamarama 1, undated

b9 Brief of evidence of Patrick Nicholas, undated

b10 Brief of evidence of Janice Kuka, undated

b11 Brief of evidence of Trudy Ake, May 1998

b12 Brief of evidence of Miriama Walker, May 1998

(a) Miriama Walker, 'Social Impact Confronting pirirakau', report to Waitangi Tribunal, May 1998

b13 Brief of evidence of Colin Bidios, 18–22 May 1998

b14 Brief of evidence of Taaringaroa Nicholas, undated

B15 Opening submissions on behalf of Wai 227 claimants, 22 May 1998

B16 Iwi report onTauranga district strategic plan, undated

C Documents Received to End of Second Hearing

C1 Heather Bassett, Richard Kay, 'Ngaiterangi and the Crown', report commissioned by Waitangi Tribunal, June 1998

C2 Katherine Orr-Nimmo, '"A Matter of Bargain": Aspects of the History of Parish of Te Puna Lots 16 and 154', report commissioned by Waitangi Tribunal, September 1998
(a) Supporting documents to document C2, various dates
(b) Supporting documents to document C2, various dates
(c) Supporting documents to document C2, various dates

C3 Summary of document A33, October 1998

C4 Opening submissions on behalf of Wai 42(c) claimants, 10 November 1998

C5 Brief of evidence of Te Ruruanga Te Keeti, 10 November 1998

C6 Brief of evidence of Minnie Gotz, 10 November 1998

C7 Brief of evidence of Ruiangapura, 10 November 1998

C8 Brief of evidence of Matua Koperu, 11 November 1998

C9 Brief of evidence of Geraldine Reweti, 11 November 1998

C10 Brief of evidence of Neri Ormsby, 11 November 1998

C11 Brief of evidence of Henare Rahiri, 11 November 1998

C12 Brief of evidence of Kawainga Tata, 11 November 1998

C13 Summary of document A37(a), 11 November 1998
(a) Part 1

C13—*continued*
(b) Part 2
(c) Part 3

C14 Brief of evidence of Mokohiti Brown, 13 November 1998

C15 Brief of evidence of Kevin Eru, 13 November 1998

C16 Brief of evidence of Grace Gates, 13 November 1998

C17 Brief of evidence of Stephen Gates, 13 November 1998

C18 Brief of evidence of Charles Rahiri, 13 November 1998

C19 Summary of document A37(b), 12 November 1998

C20 Brief of evidence of Ngaronoa Ngata, 12 November 1998

C21 Summary of document A76, 12 November 1998
(a) Supporting documents to document C21, various dates

C22 Brief of evidence of Delwyn Bennett-Howe, 13 November 1998
(a) Supporting documents to document C22, various dates

C23 Brief of evidence of Hone Ngata, 13 November 1998

C24 Brief of evidence of Anthony Bennett, 13 November 1998

C25 Joanne Deely, *Bathing Suitability Survey: Summer 1998* (Whakatane: Environment BOP, 1998)

C26 Site visit booklet, undated

D Documents Received to End of Third hearing

D1 Evidence of Anne Salmond in the Planning Tribunal, undated

D2 Heather Bassett and Richard Kay, 'Ngati Pukenga and Ngapeke Block', report commissioned by Waitangi Tribunal, December 1998

D3 Summary of document A35, undated

D4 Statement by Andrew Ralph on behalf of Tauranga District Council, undated

D5 Roimata Minhinick 'Report on the Wai 672 Claim', report commissioned by Waitangi Tribunal, March 1999
(a) Supporting documents to document D5, various dates

D6 Hoki Leef-Bruce, 'Report on the Wai 707 Claim', report commissioned by Waitangi Tribunal, March 1999

D7 Robert McClean, 'Tauranga Moana Fisheries, Reclamations, and Foreshores', report commissioned by Waitangi Tribunal, April 1999
(a) Supporting documents to document D7, various dates
(b) Supporting documents to document D7, various dates

D8 Brief of evidence of Te Miringa Rawiri, undated

D9 Brief of evidence of Karora Te Mete, undated

D10 Brief of evidence of James Tapiata, undated

D11 Brief of evidence of Tuti Tukaokao, undated

D12 Brief of evidence of Tania Tutaki, undated

D13 Brief of evidence of Arapera Nuku, undated
(a) English translation of document D13, undated

D14 Brief of evidence of Te Uira Miritana, undated

D15 Brief of evidence of Karen Nicholas, undated
(a) Evidence concerning Ngati Hangarau Kohanga Reo

D16 Brief of evidence of Gerard Gardiner, undated

D17 Brief of evidence of Angela Bennett, undated

D18 Brief of evidence of Alan Bennett, undated

D19 Brief of evidence of Homai Balzer, undated

D20 Brief of evidence of Sharla Heke, undated

D21 Brief of evidence of Riripeti Maihi, undated
(a) English translation of document D21, undated

D22 Brief of evidence of Huhana Heke, undated

D23 Brief of evidence of Merita Harawira, undated

D24 Brief of evidence of Kihi Ngatai, undated
(a) English translation of document D24, undated

D25 Mere Balzer, 'Nga Tatai Korero o Ngati Hangarau', report commissioned by Waitangi Tribunal, March 1999

D26 Marinus La Rooij, 'Wairoa Marae, Ngati Kahu and the Realignment of State Highway 2', scoping report commissioned by Waitangi Tribunal, 15 April 1999

D27 Opening submissions on behalf of Wai 503 and Wai 672 claimants, undated

D28 *Appendix to the Journal of the House of Representatives*, 1862, extracts
(a) Assorted correspondence, various dates
(b) Orders in Council to Tauranga City Council
(c) The Public Works Act 1928, extract
(d) Submissions by Tauranga District Council as successor to the Tauranga City Council, undated
(e) Assorted correspondence, various dates

D29 *Appendix to the Journal of the House of Representatives*, 1862, extracts

D30 *Kapokapo*, waita, undated

D31 Brief of evidence of Michael O'Brien, undated
(a) Summary of evidence concerning Ngamanawa Incorporation, undated

D32 Brief of evidence of Huia Harnett, undated

D33 Entry vacated

D34 Brief of evidence of Awatea Hohepa, undated
(a) English translation of document D34, undated

D35 Brief of evidence of Janis Smith, undated

E Documents Received to End of Fourth Hearing

E1 Heather Bassett and Richard Kay 'Crown Acquistion and Desecration of Nga Potiki Land', report commissioned by Waitangi Tribunal, May 1999
(a) Summary of document E1, undated
(b) Supporting documents to document E1, various dates

E2 Summary of document A44, June 1999

E3 Brief of evidence of Kiakino Paraire, undated

E4 Brief of evidence of Ngahuia Dixon, undated

E5 Brief of evidence of Haare Williams, undated
(a) VHS videotape, undated
(b) Transcription of document E5, undated

E6 Brief of evidence of Hoani Farrell, undated
(a) English translation of document E6, undated

E7 Brief of evidence of Monte Ohia, undated

E8 Brief of evidence of Rapata Wepiha, undated

E9 Brief of evidence of Maaka Harawira, undated

E10 Brief of evidence of Wiparera TeKani, undated
(a) Maori translation of document E10, undated

E11 Brief of evidence of Merepaora Webster, undated

E12 Brief of evidence of Hine Carroll, undated

E13 Brief of evidence of Parewaitai Reeder, undated

E14 Brief of evidence of Te Aohuakirangi Woodhouse, undated

E15 Brief of evidence of Ebba Te Tua, undated
(a) English translation of document E15, undated

E16 Brief of evidence of Sydney Rameka, undated

E17 Brief of evidence of Andrew Kiwi, undated

E18 Brief of evidence of Des Kahotea, undated
(a) Supporting documents to document E18, various dates
(b) Supporting documents to document E18, various dates

E19 Brief of evidence of Paula Werohia-Lloyd, undated

E20 Brief of evidence of Poihaere Walker, undated

E21 Brief of evidence of Waka Cookson, undated
(a) Supporting documents to document E21, various dates

E22 Entry vacated

E23 Brief of evidence of Ray Hawira, undated

E24 Entry vacated

E25 Brief of evidence of Colin Reeder, undated

E26 Brief of evidence of Peata McLeod, undated

E27 Brief of evidence of Morro Peters, undated
(a) English translation of document E27, undated

E28 Brief of evidence of Keremeta Rameka, undated
(a) English translation of document E28, undated

E29 Brief of evidence of Thomas Wepiha, undated

E30 Brief of evidence of Paul Akuhata, undated

E31 Opening submissions on behalf of Wai 717 claimants, 28 June 1999
(a) Supporting documents to document E31, various dates

E32 Correspondence between Cooney, Lees and Morgan and Tauranga District Council concerning compensation for sewage pipeline, 24 November 1998 and 18 December 1998
(a) Deed between trustees of Part Papamoa 2 and the Tauranga District Council, 23 November 1998
(b) Application to Maori Land Court for orders replacing and reducing number of trustees in Part Papamoa 2, undated

E33 Brief of evidence of Tirikawa Ohia, undated

E34 Documents in relation to Mangatawa, undated

E35 Brief of evidence of Rau McCleod, undated

E36 Brief of evidence of Taurewa Taepa, undated
(a) Preamble to document E36

E37 Review of Te Ture Whenua Maori Act 1993

F Documents Received to End of Fifth Hearing

F1 Evaan Aramakutu, 'The Compulsory Acquistion of Uneconomic Rangiwaea Island Interests by the Maori Trustee', report commissioned by Waitangi Tribunal, April 1999

F2 Marinus La Rooij, 'Wairoa Hapu and the Realignment of State Highway 2', report commissioned by Waitangi Tribunal, 13 August 1999

F2—*continued*

(a) Supporting documents to document F2, various dates

F3 Hazel Riseborough, 'Ngai Tamarawaho: "Protectors of the Prophecy"', report commissioned by Crown Forestry Rental Trust, April 1999

(a) Summary of document F3, undated

(b) Supporting documents to document F3, various dates

F4 Submissions on behalf of Wai 664 claimants concerning application to extend inquiry district, 30 November 1999

(a) Supporting documents to document F4, various dates

F5 Brief of evidence of Thomas McClausland, 30 November 1999

F6 Letter of Erica Rolleston concerning evidence presented on behalf of Wai 42(a) claim, undated

F7 Brief of evidence of Reremanu Wihapi, 14 December 1999

F8 Submissions on behalf of Tapuika concerning application to extend inquiry district, 14 December 1999

F9 Submissions on behalf of Wai 717 claimants concerning application to extend inquiry district, 14 December 1999

F10 Submissions on behalf of Wai 664 claimants concerning application to extend inquiry district, 14 December 1999

F11 Grant Young, 'Ngati He Hapu Land at Tauranga Moana', scoping report commissioned by Waitangi Tribunal, 19 November 1999

F12 Summary of document A60, undated

(a) Supporting documents to document F12, various dates

F13 Haare Williams, 'Nga Korero mo Ngai Tamarawaho', February 2000

F14 Des Kahotea, 'Nga Mana me nga Whenua ki Tauranga Moana Tauranga a Waka', December 1999

F15 Brief of evidence of Alex Tata, undated

F16 Brief of evidence of Dave Matthews, undated

F17 Brief of evidence of Morehu Rahipere, undated

F18 Brief of evidence of Frances Winiata, undated

F19 Brief of evidence of Charles Piahana, undated

F20 Brief of evidence of Desmond Tata, undated

F21 Brief of evidence of Waiora Nuku, undated
(a) English translation of document F21, undated

F22 Brief of evidence of Te Hoori Rikirangi, undated

F23 Brief of evidence of Takuwai Mason, undated
(a) English translation of document F23, undated

F24 Brief of evidence of Tupiki Tawa, undated
(a) English translation of document F24, undated

F25 Brief of evidence of Angela Bennett, undated

F26 Brief of evidence of Alicia McCreath, undated

F27 Brief of evidence of Anaruia Gear, undated

F28 Brief of evidence of Piripi Winiata, undated
(a) Supporting documents to document F28, various dates

F29 Rachael Willan, 'From County to Town: A Study of Public Works and Urban Encroachment in Matapihi, Whareroa and Mount Mauganui', report commissioned by Waitangi Tribunal, December 1999
(a) Supporting documents to document F29, various dates

F30 Opening submissions on behalf of Wai 659 claimants, 7 February 2000

F31 Ngai Tamarawaho maps

F32 The Huria Accord, 4 December 1988
(a) Draft agreement between Ngai Tamarawaho and Tauranga City Council, undated

F33 Correspondence between Tauranga City Council and Ngai Tamarawaho, 1987–1989

F34 Brief of evidence of Parihaka Kohu-Fry, undated

F35 Brief of evidence of Olive Tata, undated

G Documents Received to End of Sixth Hearing

G1 Fiona Hamilton, 'Ngai Te Ahi Historical Report', report commissioned by Crown Forestry Rental Trust, February 2000
(a) Summary of document G1, undated
(b) Supporting documents to document G1, various dates
(c) Supporting documents to document G1, various dates

G2 Tiraroa Reweti, 'Ngai Te Ahi Social Impact Report', report commissioned by Crown Forestry Rental Trust, February 2000
(a) Summary of document G2, undated
(b) Transcripts, undated

G3 Brief of evidence of Tane Te Heke, undated
(a) English translation of document G3, undated

G4 Brief of evidence of Kihi Ngatai, undated
(a) English translation of document G4, undated

G5 Brief of evidence of Huikakahu Kawe, undated

G6 Brief of evidence of Joseph Malcolm, undated

G7 Brief of evidence of Rangiwhakaehu Walker, undated

G8 Brief of evidence of Lena McLeod, undated

G9 Brief of evidence of Rangimauata Tawa, undated

G10 Brief of evidencee of Rangikawhiti Hill, undated

G11 Brief of evidence of Pauline Hoskins, undated

G12 Brief of evidence Iria Whiu, undated

G13 Brief of evidence of Nancy Teddy, undated

G14 Brief of evidence of Marama Furlong, undated

G15 Brief of evidence of Tuwhakairiora Te Kakau, undated

G16 Brief of evidence of Rikirau Luttenberger, undated
(a) English translation of document G16, undated

G17 Brief of evidence of Te Kapuhuia Reweti, undated
(a) Supporting documents to document G17, various dates

G18 Marinus La Rooij, 'Maori Land and Council Rates in Tauranga Moana', scoping report report commissioned by Waitangi Tribunal, 7 March 20

G19 Opening submissions on behalf of Wai 370 claimants, 27 March 2000

G20 Ngai Te Ahi GIS maps, March 2000

G21 Brief of evidence of Parengamihi Gardiner, undated

G22 Brief of evidence of George Douglas, undated

G23 Brief of evidence of Ronald Kawe, undated

G24 Brief of evidence of Desmond Kaiawha, undated
(a) Supporting documents to document G24, various dates
(b) Supporting documents to document G24, various dates

G25 Extracts from proposed Tauranga district plan, September 1998

G25—*continued*

(a) Map

(b) Notes on statement of Ronald Kawe

G26 Brief of evidence of Keni Piahana, undated

G27 Brief of evidence of Te Aroha Luttenberger, undated

(a) Supporting documents to document G27, various dates

G28 Site visit booklet, March 2000

H Documents Received to End of Seventh Hearing

H1 Simon Hedley, 'Ngati Tapu Historical Report', report commissioned by Crown Forestry Rental Trust, April 2000

(a) Summary of document H1, undated

(b) Supporting documents to document H1, various dates

H2 Patrick Nicholas, 'Ngati Tapu and Te Materawaho Manawhenua Report', report commissioned by Crown Forestry Rental Trust, April 2000

(a) Memorandum from Patrick Nicholas to the Waitangi Tribunal concerning Ngaiterangi hearing, undated

H3 Timothy Walker, 'Horatio Gordon Robley', report commissioned by Crown Forestry Rental Trust, April 2000

H4 Brief of evidence of Puhirake Ihaka, undated

(a) Supporting documents to document H4, various dates

(b) Summary of document H4, undated

(c) Supporting documents to document H4, various dates

H5 Brief of evidence of Eileen Gear, undated

H6 Brief of evidence of Tureiti Stockman, undated

H7 Brief of evidence of Hurihia Emery, undated

H8 Brief of evidence of Arthur Devon, undated

h9 Brief of evidence of Rose Harrop, undated

h10 Brief of evidence of Patricia Fong Toy, undated

h11 Site visit booklet, 29 May 2000

h12 Opening submissions on behalf of Wai 546 claimants, undated

h13 Map booklet, undated

h14 Brief of evidence of Maru Tapsell, undated

h15 Brief of evidence of Rapata Te Mete, undated

h16 Brief of evidence of Joseph Tukaki, undated

h17 Brief of evidence of Leonie Walker, undated

h18 Additional submissions on behalf of Wai 546 claimants, 2 June 2000

1 Documents Received to End of Eighth Hearing

11 Nicola Blackburn, 'Further Nga Potiki Land Alienation and Public Works Takings', report commissioned by Crown Forestry Rental Trust, May 2000
(a) Supporting documents to document 11, various dates
(b) Summary of document 11, undated

12 Brief of evidence of Hinerangi Purewa, undated

13 Brief of evidence of Whitiora McLeod, undated

14 Brief of evidence of Tahi McLeod, undated

15 Brief of evidence of Ngahiraka McLeod, undated

16 Brief of evidence of Te Rehina Walker, undated

17 Brief of evidence of Huriana McLeod-Taite, undated

18 Brief of evidence of George Evans, undated

19 Bundle of documents submitted by counsel for Wai 540, undated

110 Summary of document C1, September 2000

111 Summary of document A40, August 2000

112 Richard Boast, 'Ngai Te Rangi before the Confiscation', report commissioned by Crown Forestry Rental Trust, 25 August 2000
(a) Summary of document 112, undated

113 Brief of evidence of Ron Crosby, 15 September 2000

114 Brief of evidence of Hirini Mead, 15 September 2000

115 Brief of evidence of Colin Reeder, 15 September 2000

116 Brief of evidence of Mahaki Ellis, 15 September 2000

117 Brief of evidence of Toa Faulkner, 15 September 2000

118 Brief of evidence of Porikapa Tukaki, 15 September 2000

119 Brief of evidence of Taiawa Kuka, 15 September 2000

120 Brief of evidence of Hauata Palmer, 19 September 2000

121 Brief of evidence of Matiu Dickson, 19 September 2000

122 Brief of evidence of Tai Taikato, 19 September 2000
(a) Supporting documents to document 122, various dates

123 Brief of evidence of Raimona Te Kura, 19 September 2000

124 Brief of evidence of Puhirake Ihaka, 19 September 2000
(a) Supporting documents to document 124, various dates

125 Brief of evidence of Te Karehana Wicks, 19 September 2000

126 Entry vacated

127 Opening submissions on behalf of Wai 540 claimants, 25 September 2000

128 Brief of evidence of Samuel Te Hau o te Rangi Tutua in suport of Ngai Te Rangi, 25 September 2000

129 Brief of evidence of Kihi Ngatai, 25 September 2000

130 Brief of evidence of Alan Bennett, 26 September, 2000

J Documents Received to End of Ninth Hearing

J1 Richard Boast, 'Confiscation and Regrant: Matakana, Rangiwaea, Motiti and Tuhua – Raupatu and Related Issues', report commissioned by Crown Forestry Rental Trust, November 2000

J2 Fiona Hamilton, 'Ngati He Historical Report: The Nineteenth Century', report commissioned by Crown Forestry Rental Trust, November 2000
(a) Supporting documents to document J2, various dates

J3 Summary of document J1, undated

J4 Summary of document J2, undated

J5 Brief of evidence of Kihi Ngatai, undated

J6 Brief of evidence of Wiparera Te Kani, undated
(a) English translation of document J6, undated

J7 Brief of evidence of Mahaki Ellis, undated

J8 Brief of evidence of Hori Ross, undated

J9 Brief of evidence of Ngaroimata Cavill, undated

J10 Brief of evidence of Piuna Fisher, undated

J11 Brief of evidence of Waraki Paki, undated

J12 Brief of evidence of Te Hui Ngatai, undated

J13 Brief of evidence of Matiu Dickson, undated

J14 Brief of evidence of Anthony Fisher, undated

J15 Brief of evidence of Ngareta Timutimu, undated

J16 Brief of evidence of Puharangi Ngatai, undated

J17 Brief of evidence of Katrina Te Koari, undated

J18 Brief of evidence of Puaaorangi Taikato, undated

J19 Brief of evidence of Riri Ellis, undated

J20 Brief of evidence of Hauata Palmer, undated

J21 Brief of evidence of Taiawa Kuka, undated

J22 Brief of evidence of Heeni Murray, undated

J23 Brief of evidence of Mark Ngatai, undated

J24 Brief of evidence of Turi Ngatai, undated

J25 'Nga Taaonga o Ngai Tukairangi', booklet of waiata, undated

J26 'Nga Whakaahua o Ngai Tukairangi',booklet of photographs, undated

J27 Brief of evidence of Ngareta Timutimu, undated

J28 Brief of evidence of Tai Taikato, undated

J29 Brief of evidence of Delwyn Little, undated

J30 Brief of evidence of Des Kahotea, undated

J31 Brief of evidence of Tane Kaiawha, undated
(a) Supporting documents to document J31, various dates

J32 Brief of evidence of Mita Ririnui, undated

J33 Brief of evidence of Maureen Ririnui, undated

J34 Brief of evidence of Hinerongo Walker, undated

J35 Opening submissions on behalf of Wai 228, Wai 266, and Wai 854 claimants, 4 December 2000

J36 Brief of evidence of Tiraroa Toma, undated

J37 Brief of evidence of Kapurangi Toma, undated

J38 Brief of evidence of Donna Poka, undated

J39 Opening submissions on behalf of Wai 211 claimants, 5 December 2000

J40 Map of Ngai Tukairangi rohe, undated

J41 Opening submissions on behalf of Wai 342 claimants, 6 December 2000
(a) Supporting documents to document J41, various dates
(b) Supporting documents to document J41, various dates

J42 Brief of evidence of Desmond Kaiawha, undated
(a) Supporting documents to document J42, various dates

J43 Transcript of evidence of Douglas Sutton, undated

J44 Map booklet, undated

K Documents Received to End of Tenth Hearing

K1 Barry Rigby, 'Whitaker and Russell in Tauranga Moana', scoping report commissioned by Waitangi Tribunal, January 2001

K2 Duncan Moore, 'Final Report on Ngati Raukawa in Tauranga Moana', scoping report commissioned by Waitangi Tribunal, 15 June 1999

K3 Kirstie Ross, 'The Katikati–Te Puna Reserves', report commissioned by Crown Forest Rental Trust, January 2001

(a) Supporting documents to document K3, various dates

K4 Tony Carlyle, 'Ngai Tamawhariua ki Katikati: A Hapu Holding Reserves under the Katikati–Te Puna Land Purchase Contract', report commissioned by Crown Forest Rental Trust, January 2001

(a) Supporting documents to document K4, various dates

K5 Simon Hedley, 'Ngati Tapu Tribal Lands Claim: Ancillary Claims Report', 2 pts, report commissioned by Crown Forest Rental Trust, October 2000, pt A

K6 Simon Hedley, 'Ngati Tapu Tribal Lands Claim: Ancillary Claims Report', 2 pts, report commissioned by Crown Forest Rental Trust, October 2000, pt B

K7 Summary of documents A48, A49, undated

K8 Brief of evidence of Des Kahotea, undated

K9 Summary of document C2, 12 February 2001

K10 Thomas Ngatai, 'The Traditional History of the Ngati Kuku Hapu', report commissioned by Crown Forestry Rental Trust, undated

K11 Summary of document K3, undated

K12 Brief of evidence of Teika Purukamu, undated

K13 Brief of evidence of Morris Wharekawa, undated

K14 Brief of evidence of Kevin Bluegum, 21 February 2001

K15 Brief of evidence of Tehiti Wharekawa, 21 February 2001

(a) Supporting documents to document K15, various dates

K16 Brief of evidence of Deborah Leef, undated

K17 Brief of evidence of Rapata Leef, undated

K18 Brief of evidence of Akinihi Curtis, undated
(a) Summary of document K18, undated

K19 Brief of evidence of Darren Leef, undated
(a) Supporting documents to document K19, various dates

K20 Whakapapa of Tangiora and Robert, undated

K21 Summary of Wai 707 claim, undated

K22 Memorandum from Patrick Nicholas in response to Crown counsel's criticism of him at Ngati He hearing, undated

K23 Map booklet, undated

K24 Bundle of documents submitted by counsel for Wai 727, undated

K25 Mary Gillingham, 'Waitaha and the Crown, 1864–1981', report commissioned by Crown Forestry Rental Trust, February 2001
(a) Supporting documents to document K25, various dates

K26 Opening submissions on behalf of Wai 42(c) and Wai 522 claimants, 4 March 2001
(a) Supporting documents to document K26, various dates

K27 *Appendix to the Journal of the House of Representatives*, 1867, extract

K28 Opening and closing submissions on behalf of Wai 727 claimants, 7 March 2001

K29 Opening submissions on behalf of Wai 707 claimants, undated

K30 Closing submissions on behalf of Wai 707 claimants, undated

K31 Summary of Wai 707 claim, undated

l Documents Received to End of Eleventh Hearing

l1 Barry Rigby, 'Justice, Seasoned with Mercy: A Report on the Katikati Te Puna Purchase', report commissioned by Waitangi Tribunal, February 2001

l2 Grant Young, 'The Alienation by Sale of the Hapu Estate of Ngati He at Tauranga Moana', 2 pts, report commissioned by Crown Forestry Rental Trust, March 2001, pt1

(a) Supporting documents to document l2, various dates

l3 Russell Stone, 'Whitaker and Russell: A Contextual Study of their Interests and Influence', report commissioned by Waitangi Tribunal, February 2001

l4 Summary of document l2, 1 March 2001

l5 Summary of document l1, 14 March 2001

l6 Summary of document f14, undated

l7 Summary of document k25, undated

l8 Brief of evidence of Tame McCausland, undated

(a) Supporting documents to document l8, various dates

(b) Supporting documents to document l8, various dates

(c) Supporting documents to document l8, various dates

l9 Kiki Smiler, 'Te Takapu o Waitaha a Hei', undated, extract

l10 Brief of evidence of Riko Ahomiro, undated

l11 Brief of evidence of Te Inaiti Tamihana, undated

l12 Brief of evidence of Mateiwa Te Ruahanga, undated

l13 Brief of evidence of Emire Richardson, undated

l14 Brief of evidence of Punohu McCausland, undated

l15 Brief of evidence of Matewai Karaka-Clarke, undated

l16 Brief of evidence of Whareoteriri Rahiri, undated
(a) Supporting documents to document l16, various dates

l17 Brief of evidence of Maru Tapsell, undated

l18 Opening submissions on behalf of Wai 342 claimants, 2 April 2001

l19 Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), extracts

l20 Memoranda of transfer for Te Aute block, submitted by Crown counsel

l21 Opening submissions on behalf of Wai 664 claimants, undated

l22 Rangataua map, undated

m Documents Received to End of Twelfth hearing

m1 International Research Institute for Maori and Indigenous Education, 'Socio-economic Impact Report for Nga Potiki', report commissioned by Crown Forestry Rental Trust, undated

m2 Shane Ashby and Buddy Mikaere, 'Wai 637: The Ngati Pukenga – Tauranga Moana Raupatu Claim report', report commissioned by Crown Forestry Rental Trust, April 2001

m3 Grant Young, 'The Alienation by Sale of the Hapu Estate of Ngati He at Tauranga Moana', 2 pts, report commissioned by Crown Forestry Rental Trust, April 2001, pt 1

m4 Delwyn Little, Aroha Ririnu, transcripts of Ngati He interviews, 2000–01

m5 Memorandum from the Crown containing questions for Evelyn Stokes, 30 April 2001

m6 Evelyn Stokes, response to questions of Crown (doc m5), undated

m7 Beca, Carter, Hollings, and Ferner Ltd, 'Rhyolite Rock in the Tauranga Area', report commissioned by Crown Forestry Rental Trust, August 2000

m8 Brief of evidence of Te Awanuiarangi Black, undated

M9 John Battersby, 'Government, Commerce and Conflict in Tauranga', report commissioned by the Crown, 13 September 2001
(a) Supporting documents to document M9, various dates
(b) Supporting documents to document M9, various dates
(c) Supporting documents to document M9, various dates
(d) Supporting documents to document M9, various dates

M10 Tony Walzl, 'Hauraki claims in the Katikati–Te Puna "Purchase"', report commissioned by Hauraki Maori Trust Board, August 2001
(a) Supporting documents to document M10, various dates

M11 Robert Hayes, 'A Study of the Origins of the Crown's Policy on Imposing Restrictions on Land Alienation and its Administration', report commissioned by the Crown, undated
(a) Supporting documents to document M11, various dates

M12 Robyn Anderson, 'The Crown, the Treaty and the Hauraki tribes, 1800–1885', 4 vols, report commissioned by Hauraki Maori Trust Board, 1997, vol 4

M13 Summary of document M2, undated

M14 Summary of document M10, undated

M15 Summary of document M12, undated

M16 Summary of document M11, undated

M17 Summary of document M9, undated

M18 Brief of evidence of Hemi Mikaere, undated

M19 Brief of evidence of Rereamomo Ohia, undated

M20 Brief of evidence of Lawson Richards, undated

M21 Brief of evidence of Rawinia Haua, undated

M22 Statement of evidence of Toko Te Taniwha, undated
(a) Supporting documents to document M22, various dates

M23 Brief of evidence of Rikiriki Rakena, undated

M24 Brief of evidence of Te Wiremu Mataia, undated

M25 Brief of evidence of Pitau Williams, undated

M26 Brief of evidence of William Peters, undated

M27 Brief of evidence of Ngakoma Ngamane, undated

M28 Brief of evidence of David Taipari, undated

M29 Brief of evidence of John McEnteer, undated
(a) Supporting documents to document M29, various dates

M30 Brief of evidence of Shane Ashby, undated

M31 Opening submissions on behalf of Wai 100, Wai 454, Wai 650, and Wai 812 claimants, 8 October 2001

M32 Brief of evidence of Peter Te Wharau, undated

M33 Opening submissions on behalf of Wai 637 claimants, 11 October 2001

M34 Ngati Pukenga maps booklet, undated

M35 Summary of document M8, undated

M36 Opening submissions on behalf of the Crown, 15 October 2001

M37 Supporting documents to document M36, various dates

M38 Supporting documents to document M36, various dates

M39 Supporting documents to document M36, various dates

M40 Supporting documents to document M36, various dates

appi

n Documents Received to End of Thirteenth Hearing

n1 Closing submissions on behalf of Wai 489 claimants, 9 November 2001

n2 Tony Walzl, 'Ngati Ruahine: Land Issues Overview, 1900–2000', report commissioned by Crown Forestry Rental Trust, September 2001

(a) Supporting documents to document n2, various dates

n3 Closing submissions on behalf of Wai 546 claimants, undated

n4 Closing submissions on behalf of Wai 947 claimants, 28 November 2001

n5 Closing submissions on behalf of Wai 362 claimants, 28 November 2001

n6 Closing submissions on behalf of Wai 755 and Wai 807 claimants, 28 November 2001

n7 Closing submissions on behalf of Wai 342 claimants, 28 November 2001

n8 Closing submissions on behalf of Wai 42(c) and Wai 522 claimants, 28 November 2001

(a) Supporting documents to document n8, various dates

n9 Closing submissions on behalf of Wai 227 claimants, 29 November 2001

n10 Closing submissions on behalf of Wai 211 claimants, 29 November 2001

n11 Joint closing submissions on behalf of Wai 42(a), Wai 211, Wai 227, Wai 228, Wai 266, Wai 370, Wai 503, Wai 540, Wai 637, Wai 645, Wai 672, Wai 701, Wai 854, and Wai 938 claimants, 3 December 2001

(a) Transcript of cross-examination of Crown witness, undated

n12 Closing submissions on behalf of Wai 717 claimants, 28 November 2001

n13 Closing submissions on behalf of Wai 353 claimants, undated

n14 Closing submissions on behalf of Wai 42(a) claimants, 4 December 2001

n15 Closing submissions on behalf of Wai 503 and Wai 672 claimants, 4 December 2001

n16 Closing submissions on behalf of Wai 100, Wai 454, Wai 650, and Wai 812 claimants, 30 November 2001

n17 Closing submissions on behalf of Wai 370 claimants, 5 December 2001

n18 Closing submissions on behalf of Wai 938 claimants, 5 December 2001

n19 Closing submissions on behalf of Wai 228, Wai 266, and Wai 854 claimants, 5 December 2001

n20 Closing submissions on behalf of Wai 540 claimants, 6 December 200

n21 Closing submissions on behalf of Wai 637 claimants, 6 December 2001

n22 Closing submissions on behalf of Wai 664 claimants, 6 December 2001

n23 Closing submissions on behalf of Wai 659 claimants, undated

o Documents Received to End of Fourteenth Hearing

o1 Documents from Archives New Zealand (ma1 1912/3350), various dates
(a) Transcripts, undated

o2 Closing submissions on behalf of the Crown, 31 January 2002

p Documents Received to End of Fifteenth Hearing

p1 Document from Archives New Zealand (g17/3, no 15), 24 September 1864

p2 Response to Crown counsel's closing submissions on behalf of Wai 489 claimants, 25 February 2002
(a) Supporting documents to document p2, various dates

p3 Response to Crown counsel's closing submissions on behalf of Wai 42(c) claimants, 7 March 2002

p4 Response to Crown counsel's closing submissions on behalf of Wai 342 claimants, 6 March 2002

P5 Response to Crown counsel's closing submissions on behalf of Wai 362 claimants, 5 March 2002

P6 Response to Crown counsel's closing submissions on behalf of Wai 659 and Wai 664 claimants, undated

P7 Response to Crown counsel's closing submissions on behalf of Wai 503 and Wai 672 claimants, 7 March 2002

P8 Response to Crown counsel's closing submissions on behalf of Wai 42(a), Wai 211, Wai 227, Wai 228, Wai 266, Wai 854, Wai 370, Wai 540, Wai 637, Wai 672, Wai 503, Wai 645, and Wai 938 claimants, 8 March, 2002

P9 Documents from Archives New Zealand (G49, no 20), undated

P10 Letter from consel for Wai 211 and Wai 227 concerning Crown grants, 5 February 2002

P11 Response to Crown counsel's closing submissions on behalf of Wai 100, Wai 454, Wai 650, and Wai 812 claimants, 8 March 2002

P12 Response to Crown counsel's closing submissionson behalf of Wai 947 claimants, 11 March 2002

P13 Response to Crown counsel's closing submissionson behalf of Wai 717 claimants, 19 March 2002

P14 Marinus La Rooij, '"The Most Difficult and Thorny Question": The Rating of Maori Land in Tauranga County', report commissioned by Waitangi Tribunal, 4 April 2002

P15 Peter McBurney, 'The Kingitanga and Other Rangatira/Autonomy Movements in Tauranga, 1860–1960', report commissioned by Crown Forestry Rental Trust, 12 June 2002

P16 Joint memorandum from claimant counsel concerning timetabling of post-raupatu claims, 31 May 2002

APPENDIX II

RICE'S LIST OF SURRENDERED TAURANGA MAORI

The following is reproduced from 'Despatch from Governor Sir George Grey, KCB, to the Right Honourable Edward Cardwell, MP', 29 July 1864, encl 2, BPP, vol 14, pp 104–107

Enclosure 2 in No 24.

CAMP, Te Papa, Tauranga, July 26, 1864.

Sir,

I told you in my last there was a probability of a number of the Ngaiterangi people coming in. I have now the honour to report that yesterday about 112 assembled here to lay down their arms and land, and tender their submision to the Queen. Those Natives who had surrendered during the last week were also present, as a report was in circulation that they were not clear on the land matter. I enclose a list of their arms, &c; also a nominal roll of numbers. At present they have only signed a declaration, and the 'kihituru,' and have been told by the officer commanding that the Governor will be communicated with on their matter. They have not brought in any loose powder, and some are without arms. I am about to make strict enquiries into this part of their case, and will report further.

In obedience to your instructions, I continue to supply them with small quantities of food.

It is to be deeply regretted that out of this matter a most disagreeable difference has arisen between the officer commanding here and Mr Commissioner Mackay.

It is certainly beyond contradiction that Messrs Mackay and Baker have appeared to have been doing their utmost to disturb arrangements already advancing so pleasantly. I have carefully avoided being drawn into this difficulty, but feel that there must be some cause for their determined and continued annoyances.

I have now the honour to report, for your information, the circumstances under which this peace movement arose. At the commencement of this month Ngatirakei wrote to the Colonel, stating they desired peace. This letter was sent, together with one from Wi Patene, to the Colonel. See copy of my reply sent up to head office.

Shortly after this, entirely without our knowledge here, Hamuera and Peacock, two of the Native Police, started for the rebel camp, and read, on their arrival there, the Governor's Proclamation, No 8 of the 2/2/64. Immediately the Natives acquiesced, and sent in as a 'tohu aroha' to Colonel Greer a wooden pipe, and requested the Natives to allow me to come up and see them. When I heard this, I reported it to the Colonel, and he agreed to the Natives' request.

However, in all my communications with the rebels, my first and last thought has been carefully to protect his Excellency's Government; and I can assure you, sir, that I did not under any circumstances request the Natives to surrender. All that have done so will tell you it was their own wish and will. I stated the words used in the Proclamation, and completed my conversation always by saying, 'You must rely entirely on the Government and the Governor.' The statement that I fetched them is untrue. I went to hear what they had to say.

I conclude, sir, with perfect confidence in the course I have taken, knowing that (as I before stated) my only desire has been to obey and forward the wishes of the Government.

I have, &c.

The Hon the Colonial Secretary,
Native Department.

(Signed) H E Rice.

(Signed)	Penehamene	Hapu – Ngatimarawaho	No arms.
	Wi Parceone	»	Sick.
	Hohepa Ta	»	Musket and pouch.
	Hoani	»	»
	Otehau	»	»
	Matiu	»	»
	Kohu	»	No arms.
	Ngapati	»	Musket and pouch.
	Hori	»	»
	Hemi	»	No arms.
	Kapa	»	Child.
	Rota	»	Musket and pouch.
	Ture	»	Sick.
	Eruera	»	No arms.

Signed before me at Haerini, part of Tauranga, this 24th day of July 1864.

(Signed) H E Rice.

(Signed)	Te Hoani	Te Ngare	Taiaha; no gun.
	Maaka	»	Musket.
	Era	»	1 hatchet (wounded).
	Bemi	»	Not at the fighting.
	Hohepa	Ngatihaugarau	»
	Pauro	»	Musket and pouch.
	Mete	»	No gun; 1 hatchet.
	Heta	Wharirua	Musket and pouch.
	Rotoehu	»	Enfield rifle and pouch.
	Raimona	»	Lost his gun at last fight.
	Hohepa	»	Lost his gun (wounded).
	Herewhini	»	No arms.
	Ihaka	Materawaho	Musket and pouch.
	Te Hurateneui	»	»
	Wharepouaka	»	»
	Peita	»	No gun.
	Turia	»	»
	Nirai	»	»
	Netana his × mark	»	»
	Mitara his × mark	»	»
	Wipori Ratahi his × mark	»	No gun; pouch.
	Tamehana his × mark	»	No gun
	Hemi his × mark	»	»
	Mohi his × mark	»	»
	Hakiaba his × mark	»	»
	Witness to marks, H E Rice.		
	Metera	Papaunahi	»

(These Natives were amongst the first to surrender. I will forward a list of arms next steamer.)

	Hoaui his × mark	Hapu – Ngatimateika
	Maka his × mark	»
	Mikaere his × mark	»
	Hopeda his × mark	»
(Signed)	Te Hoko Hoko	»
	Ngatiiti his × mark	»

	Le Matehuirua his × mark	Hapu – Ngatimateika
	Te Wetini his × mark	»
	Potaka his × mark	»
	Rapata his × mark	»
(Signed)	Hamiora	Ngatirakei
	Hakaraia (boy)	Waitaka
	Tutaia	»
	Ihaka	»
	Hohepa	»
(Signed)	Te Amohau	Te Ngare
	Ta Wio his × mark	»

Signed before me, and witnessed by me, at Te Papa, part of Tauranga, this 25th day of July 1864.

(Signed) H E Rice.

Tauranga District.

(Signed)	Wira	Ngaituwhiwhi	Musket and pouch.
	Tupara	»	»
	Tepuru	»	»
	Paora	»	»
	Hamiora	»	»
	Karora	»	Fowling-piece; caps and pouch.
	Hemi Tukere	»	Musket and pouch.
	Hohepa Taugatahon	»	Sick.
	Tame Mohorangi	»	Musket and pouch.
	Ware	»	No arms.
	Patuhoe	Takotoko	1 spear and pouch.
	Tahatika	»	Musket and pouch.
	Te Hori	»	2 guns and 2 pouches.
	Parawhai	»	1 box of caps; 1 pouch.
	Aperahama Te Hoha	»	Sick.
	Haumera	»	Fowling-piece; caps; pouch.

(Signed)	Parata Kanamora	Te Pirirakau	Taiaha and pouch.
	Le Wanahore	»	No gun; 1 pouch.
	Aperahama	»	Musket and pouch.
	Mamera Taiao	»	»
	Maurgapohato	»	Sick.
	Petera Whangapato	Te Patutahom	Musket and pouch.
	Wi Ripo	»	Fowling-piece and pouch.
	Haka Teranhuka	»	No gun; 1 pouch.
	Tera Ngaitama	»	Sick.
	Hori Ngatai	Ngaiterangi	Musket and pouch.
	Penata	»	No gun; 2 pouches.
	Te Aria	»	1 spear and 1 pouch.
	Wiremu	»	Fowling-piece and 2 pouches.
	Toruo	»	Musket and pouch.
	Te Tiepa	»	»
	Tuori	»	»
	Tone	»	Enfield rifle.
	Tihi Tapa	»	Musket and pouch.
	Renata	»	Enfield rifle.
	Rere Kaipuke	»	Fowling-piece and pouch.
	Te Kaha	»	Musket.
	Ngahuhu	»	Double gun and pouch.
	Te Kaha	»	Musket and pouch.
	Tupara	»	»
	Rawiri Pono	»	»
	Matiu	»	Patu parao and pouch.
	Pene Taka Tuaia	»	Musket and pouch.
	Repato	»	Preacher; carried no arms.
	Parona Wira	»	No gun.
	Te Ngari	»	Sick.
	Pou Kohatu	»	»
	Warepapa	Ngatekahi	Spear and pouch.
	Tihema	»	Old man.
	Terea	»	»
	Te Mame	»	»
	Maiha	Te Matehaere	Fowling-piece and pouch.
	Heremaia	»	Musket and pouch.
	Te Ngaruwhili	»	Fowling-piece and pouch.

(Signed)	Arama Karaka	Te Matehaere	Musket and pouch.
	Ngawaka	»	Cripple; carried no arms.
	Te Hera	»	No gun.
	Kereti	»	Wounded; lost gun at Gate Pa.
	Whakamahu	»	Old infirm man.
	Hamiora	»	»
	Tea	»	»
	Hamiora Tupaer	Te Paraunatu	Gun and pouch.
	Nihi Nihi	»	Musket and pouch.
	Eruera	Hapu Te Papanu Ahi	»
	Tewharehera	»	»
	Maki	»	No gun.
	Hemi Taera	»	»
	Hemi Porou	»	»
	Koi	»	»
	Reupena	»	»
	Houhon	»	Hatchet and pouch.
	Hopi	»	Never been to fight.
	Paikea	Te Ngare	Fowling-piece and pouch.

Signed before me at Otenuoetae, Tauranga, this 24th day of July 1864.

(Signed) H E Rice.

(Signed)	Enoka	Ko Tana Hapu Ko Ngaitiekairangi.	Enfield rifle and caps.
	Ruka	»	Sword and pistol.
	Kawa	»	Musket and pouch.
	Nitika	»	»
	Wiremu Heti	»	Enfield rifle and pouch.
	Niao	»	Wounded.
	Teipu	»	Musket and pouch.
	Ihaia	»	Two pounds.
	Hati	»	Musket and pouch.
	Te Rikihana	»	»
	Patai	»	Sick.

(Signed)	Tari Whenua	Ko Tana Hapu Ko Ngaitiekairangi.	Old man.
	Hamiora Tangi Awa	Hapu Ngaitirawharo	Musket, sword, and pouch.
	Waiari	Kahurantao	»
	Hirini	»	Musket and pouch.
	Ihaka	»	»
	Hakaraia	»	»
	Te Ruato	»	»
	Te Homa	»	»
	Kereopa	Ngaititeniha	No gun.
	Kopene	»	Musket and pouch.
	Kopetera	»	Arms lost at Te Ranga.
	Kotamaone	»	Cripple.
	Ko Te Kohiwi	»	»
	Ko Terangi	»	No gun.
	Hemi Haki	»	»

Signed before me at Haeriui, part of Tauranga, this 24th day of July 1864.

(Signed) H E Rice.

APPENDIX III

RESERVES AWARDED TO INDIVIDUALS IN TE PUNA–KATIKATI

A table of the reserves awarded to individuals in the
Te Puna–Katikati blocks is on the following page.

Lot	Acres	Location	Awardees
Katikati 2	50	Otawhiwhi	Hori Tupaea, Te Moananui
Katikati 19	15	Otawhiwhi	Rapata Te Pohika
Katikati 23	31	Otawhiwhi	Wi Kotero
Tahawai 1	50	Tuapiro	Te Hira te Tauri
Tahawai 4	91	Tuapiro	Enoka Te Whanake
Tahawai 3	50	Tuapiro	Hohepa Hikutaia
Tahawai 5	100	Ongare	Enoka Te Whanake
Tahawai 6	50	Ongare	Hohepa Hikutaia
Tahawai 7	50	Ongare	Hamiora Te Iwiapu
Tahawai 11	200	Rereatukahia	Hohepa Hikutaia
Tahawai 12	250	Rereatukahia	Te Moananui
Tahawai 13, 14	300	Rereatukahia	Te Moananui
Tahawai 15	50	Rereatukahia	Hamiora Tu
Tahawai 17	53	Ongare	Enoka Te Whanake
Tahawai 19	30	Near Tahawai	Timi Te Rua
Tahawai lots 21, 23	100	Whareorahi, Matahui	Eight owners
Te Mania 19	100	Matahui	Meriana Te Rangihau
Te Mania 20, 23	100	Matahui	Hohepa Hikutaia, Meriana McMillan
Te Mania 24, 25, 26, 39	514	Matahui	Taraiti, Wiremu Parera
Te Mania 27	100	Matahui	Pane Titipa
Te Mania 28	60	Matahui	Hohepa Tangatahou
Te Mania 29	50	Matahui	Kiepa Te Amohou
Te Mania 32	150	Matahui	Hatiwira Uruwahaika
Te Mania 34	50	Matahui	Paratoenga
Te Mania 36	80	Matahui	Ruka Tamakohe
Te Mania 36	80	Near Puketutu	Ruka Tamakohe
Te Mania 37, 38	350	Near Puketutu	Nga Puru, Te Puru
Te Mania 41	100	Puketutu	Hamiora Tangiwa, Waiari
Te Mania 42	80	Puketutu	Tewi
Te Mania 43	50	Puketutu	Harawira Kotai
Te Mania 44	100	Near Puketutu	Wiremu Heti, Hemi Palmer, Teira Rewarewa, Romana
Te Mania 45	100	Near Puketutu	Te Puru
Te Mania 48	120	Rereatukahia	Ngatira, Te Kiri
Te Mania 49	100	Near Matahui	Te Moananui
Te Mania 68	80	Near Matahui	Meriana McMillan
Apata 205	100	Te Apata	Mere Tu
Apata 206	100	Te Apata	Mere Taka
Apata 207	200	Te Apata	Raniera Te Hiahia
Apata 208	100	Te Apata	Hamiora Tu
Apata 209	100	Te Apata	Hori Tupaea
Apata 210	20	Te Apata	Merita, Rakera
Apata 212	200	Te Apata	Hone Mutu, Wera, Horomona
Apata 213	20	Te Atuakahae	Ngarae
Te Puna 51	25	Omokoroa	Hamuera
Te Puna 186	28	Omokoroa	Mere Toke, Tekiteki
Te Puna 210	50	Near Omokoroa	Pene Taka

APPENDIX IV

ALIENATION TABLES

Tables of reserves and alienations are reproduced on the following pages.

Table 1: Confiscated block reserves, known alienations before 1886

Lot	Acres	Location	Vendor / Lessor	Purchaser / Lessee	Price	Date of sale
Te Puna 9	100	Te Puna	Te Kuka Te Mea	John Chadwick	—	18 June 1868
Te Puna 10	7	Te Puna	Enoka Te Whanake	John Thorne	£20	21 September 1866
Te Puna 148	7	Te Puna	Hamiora Tu	Charles Harley	£65	2 September 1868
Te Puna 149	7	Te Puna	Raniera Te Hiahia	Charles Harley	£65	2 September 1868
Te Puna 161	30	Te Puna	Mere Taka	Daniel Sellars	£15	25 October 1869
Te Puna 165	47	Te Puna	Te Moananui	Abraham Warbrick	£12 15s	13 October 1868
Te Puna 175, 176	54	Te Puna	Maihi Haki	Captain Clarke	—	Before 1883
Te Puna 178	70	Te Puna	Enoka Te Whanake	Thomas Craig	£17 10s	13 May 1869
Te Puna 179	125	Te Puna	Enoka Te Whanake	Thomas Craig	—	13 May 1869
Te Puna 185	50	Te Puna	Matenga Tawhero	James Hally	£25	17 November 1875
Te Papa 6	20	Otumoetai	Mika, Hohi	Thomas Craig	£20	June 1868
Te Papa 13	49	Bethlehem	Paroto Manutawhiorangi	John McAllister	£49	20 December 1870
Te Papa 16	10	Otumoetai	Wiremu Parera	—	—	Leased by early 1870s and subsequently sold
Te Papa 17	10	Otumoetai	Hohepa Hikutaia	—	—	Sold by early 1870s
Te Papa 20	196	Near Pukehinahina	Hamiora Tu, Te Retimana Te Ao	John Chadwick	£200	24 April 1867
Te Papa 21, 107, 108	85	Otumoetai	Hori Ngatai	—	—	Leased by early 1870s and subsequently sold
Te Papa 22, 23, 24	3 × 50	Near Greerton	—	—	—	Before 1870
Te Papa 26	77	Otumoetai	Hamiora Tu, Raniera Te Hiahia	Thomas Craig	£162	4 September 1869
Te Papa 92	100	Bethlehem	Tomika Te Mutu, Te Kuka Te Mea	John Chadwick, Edmond Foley	£80	24 December 1866?

Te Papa 99	49	Bethlehem	Ruka Huritaupoki, Te Ririhahi	H T Clarke	£80	29 May 1873
Te Papa 100	52	Otumoetai	Hamiora Tu, Ngamanu	William Fraser, Finlay McMillan	£60	20 November 1873
Te Papa 102	100	Otumoetai	Turere, Te Patu	—	—	Leased by early 1870s and subsequently sold
Te Papa 103	110	Otumoetai	Hori Tupaea	—	—	Leased by early 1870s and subsequently sold
Te Papa 105, 109	129	Otumoetai	Tomika Te Mutu, Te Kuka Te Mea	Edmond Foley	£300	21 December 1866
Te Papa 110	81	Otumoetai	Enoka Te Whanake	—	—	Leased by early 1870s and subsequently sold
Te Papa 111, 112	200	Judea	Hamiora Tu, Te Retimana Te Ao	Thomas Craig	£250, £550	10 July, 19 August 1867
Te Papa 113	10	Otumoetai	Mere Hohepa	—	—	Sold by early 1870s
Te Papa 115	100	Judea	Kohu Paraone, Wairoa, Anaru Haua, Ataiti, Rapata, Hore Rahipere, Wetini, Penehamine, Te Maru	David Lundon	—	17 February 1872
Te Papa 116	85	Judea	Pihana siblings	David Lundon	—	50 acres leased and subsequently sold in 1880s
Te Papa 117	80	Judea	Anaru Haua	—	—	50 acres sold by early 1870s

Note: The date of sale is either the date recorded on the deed of conveyance or, where this information was not available, the approximate date of the transaction or transactions.

Source: Document A57, pp 121–126, 219–221; document F3, pp 88–97; document H1, pp 76–90; document K3, pp 37, 40–41, 46; document M2, pp 62–64.

Table 2: Te Puna–Katikati reserves, known alienations before 1886

Lot	Acres	Location	Vendor / Lessor	Purchaser / Lessee	Price	Date of deed
Katikati 19	15	Otawhiwhi	Rapata Te Pohika	Charles Harley	£22 10s	11 June 1880
Tahawai 1	50	Tuapiro	Te Hira Te Tuiri	William Fraser	Lease £5 per annum	24 August 1876
Tahawai 1	50	Tuapiro	Te Hira Te Tuiri	Elizabeth Fraser (William Fraser's wife)	£50	26 September 1882
Tahawai 3	50	Tuapiro	Hohepa Hikutaia	William Fraser	£7 10s	12 April 1869
Tahawai 4	91	Tuapiro	Hamiora Te Iwiapu	William Aitken	£44 15s	c 1877
Tahawai 5	100	Ongare	Enoka Te Whanake	G V Stewart	Lease. rental unknown	25 October 1875
Tahawai 5	100	Ongare	Enoka Te Whanake	G V Stewart	Lease £100 plus £12 per annum for 99 years	30 August 1882
Tahawai 6	50	Ongare	Hohepa Hikutaia	William Fraser	£7 10s	12 April 1869
Tahawai 7	50	Ongare	Hamiora Te Iwiapu	Abraham Warbrick	£12	30 October 1868
Tahawai 9	500	Ongare	Rotoehu, Timi	Thomas Macky	£92	1 January 1869
Tahawai 11	200	Rereatukahia	Hohepa Te Kai	R J Gill	£40	4 December 1868
Tahawai 12	250	Rereatukahia	Te Moananui	Henry Skeet	£37 10s	12 February 1869
Tahawai 13/14	300	Rereatukahia	Te Moananui	R J Gill	£45	25 March 1869
Tahawai 15	50	Rereatukahia	Hamiora Tu	R J Gill	Lease 25 years £5 per annum	6 September 1870
Tahawai 15	50	Rereatukahia	Hamiora Tu	John C Young	£50	8 January 1877
Tahawai 17	53	Ongare	Enoka Te Whanake	Edmund Foley	£25	15 May 1876
Tahawai 19	30	Near Tahawai	Timi Te Rua	Daniel Sellars	£10	2 February 1876
Te Mania 19	100	Matahui	Meriana Te Rangihau	Finlay McMillan	10s	7 August 1877
Te Mania 20/23	100	Matahui	Hohepa Hikutaia	William Kelly	Lease 5 years £10 per annum with purchase option	25 April 1877
Te Mania 20/23	100	Matahui	Hohepa Hikutaia	Finaly McMillan	£90	24 July 1877
Te Mania 27	100	Matahui	Pane Titipa	John Chadwick	£10	9 January 1871
Te Mania 28	60	Matahui	Hohepa Tangatahou	Thomas Craig	£18	23 October 1869
Te Mania 29	50	Matahui	Kiepa Te Amohou	Daniel Sellars	£50	20 October 1869
Te Mania 32	150	Matahui	Hatiwira Uruwahaika	Joseph Henry	£37 10s	29 July 1869
Te Mania 33, 35, 46, 47	500	Near Puketutu	Te Kuka, Te Puru	Thomas Craig	Lease £10 per annum	24 December 1869

Te Mania 33, 35, 46, 47	500	Near Puketutu	Te Kuka, Te Puru	O C McGee	£600	29 June 1875
Te Mania 36	80	Near Puketutu	Ruka Tamakohe	G V Stewart	Lease £8 per annum	18 October 1875
Te Mania 37, 38	350	Near Puketutu	Nga Puru, Te Puru	G V Stewart	£350	6 July 1869
Te Mania 41	100	Puketutu	Hamiora Tangiawa	Edmond Foley	Lease £5 per annum	22 April 1870
Te Mania 41	100	Puketutu	Hamiora Tangiawa, Waiari	G V Stewart	Lease £10 per annum (first seven years), £12 (second seven years), £15 (third seven years)	24 August 1874
Te Mania 41	100	Puketutu	Hamiora Tangiawa, Waiari	G V Stewart	Part sale of 50 acres £100	29 October 1879
Te Mania 41	100	Puketutu	Hamiora Tangiawa, Waiari	Joseph Smith	Part sale of 50 acres £80	13 November 1879
Te Mania 42	80	Puketutu	Tewi	John Marshall	£10	14 August 1872
Te Mania 43	50	Puketutu	Harawira Kotai	George Douglas	£9	4 March 1878
Te Mania 44	100	Near Puketutu	Wiremu Heti, Hemi Palmer, Teira Rewarewa, Romana	O C McGee	£118	29 June 1875
Te Mania 45	100	Near Puketutu	Te Puru	R J Gill	£25	12 October 1868
Te Mania 48	120	Rereatukahia	Ngatira, Te Kiri Te Kuka Te Mea	Edmund Foley	£60	13 July 1874
Te Mania 49	100	Near Matahui	Te Moananui	W H Kissling	£10	27 October 1868
Apata 205	100	Te Apata	Mere Tu	R Horne, J C Young	£100	3 June 1878
Apata 206	100	Te Apata	Mere Taka	J M Clark	£22	21 December 1868
Apata 207	200	Te Apata	Raniera Te Hiahia	J M Clark	£40	10 December 1868
Apata 208	100	Te Apata	Hamiora Tu	T L Macky	£25	4 December 1868
Apata 209	100	Te Apata	Hori Tupaea	R J Gill	£70	1 February 1869
Apata 213	20	Te Atuakahae	Ngarae	Agnes Preece	£60	5 February 1886
Te Puna 49, 50	202	Omokoroa	Hakiriwihi, Te Raihi	R J Gill	Lease £20 per annum	18 March 1871
Te Puna 49, 50	202	Omokoroa	Hakiriwihi, Te Raihi	Tice Gellibrand	£350	25 July 1877
Te Puna 52. 53	265	Omokoroa	Te Makaka, Te Puru, Patuhoe	R J Gill	£83 5s	1 September 1868
Te Puna 186	28	Omokoroa	Mere Toke, Harawira Kotai, Nahu	Tice Gellibrand	£35	1 October 1877
Te Puna 187, 188	67	Omokoroa	Te Makaka, Patuhoe	R J Gill	£4 per annum	29 June 1870
Te Puna 187, 188	67	Omokoroa	Te Makaka, Patuhoe	Tice Gellibrand	£100	17 July 1877

Source: Document K3(a)

Table 3: Daldy's Matakana purchases

Block	Acres	Vendor	Price	Date of deed
Waikoura	724	Kereti Te Moananui, Te Wharanui, Harawai Te Kotai, Te Herewini Wharerua, Tiko Kurawhero	£72 8s	27 December 1869
Paretata 1	1583	Kiko Kurawhero, Harawira Kotai, Timi Te Rua, Te Kainui	£158 6s	27 December 1869
Paretata 2	3	Hori Tupaea	£5	28 December 1869
Oturoa	206	Hohepa Te Kai, Wiremu Parera	£20 12s	20 December 1869
Omanuwhiri	1317	Te Kuka, Akuhata Te Nihinihi, Pirihia Turoa	£101 14s	24 December 1869
Ohinetama	1412	Enoka Te Whanake	£141 4s	18 September 1873
Wairaka	724	Wharenui Harawira, Kotai, Kereti Moananui, Herewini Wharerua	£72 8s	20 December 1869
Pukekahu	1310	Te Kuka, Kepia Te Amohau, Hemi Palmer, Hohepa Palmer	£131	28 December 1869
Okotare	736	Kepia Te Amohau	£73 12s	20 December 1869

Source: Document A8, pp 12–39

Table 4: Waimapu Valley alienations before 1886

Block	Acres	Vendor/ Lessee	Purchaser/ Lessor	Price	Date of deed	Restriction on alienation
Waitaha 2	8082	Makarini Tareha, Ranapia Kahutoki, Kihiriri Reweti, Arama Karaka, Hone Makararui, and others of Ngati He	Jonathan Brown	£2800	21 May 1884	None
Ohauiti 2	6547	Tatare Wirikake, Te Ranapia Kahukoti, Whakataua, Hone Makarauri, Te Tauaro, and others of Ngai Te Ahi and Ngati He	George Morris	£2000?	2 April 1878	None
Oropi 1	2550	Te Whakatana, Moiri Tutauanui, Tatare Wirikake, and others of Ngai Te Ahi and Ngati He	A C Turner, T Buddle, J F Buddle	£1291	Before December 1881	Removed 10 July 1882
Waoku 1	1995	Taupo Mauhi and others	A C Turner, T Buddle, J F Buddle	12s 6d per acre	Before April 1883	Removed between April 1880 and March 1883
Waoku 2	1656	Te Teira and others of several Te Arawa hapu	A C Turner, T Buddle, J F Buddle	c 6s 2d per acre	24 June 1881	Removed 29 November 1882
Poike	431	—	—	Under lease by May 1886	—	—
Ohauiti 1	643	—	—	Under lease by May 1886	—	—
Tapuaeotu	51	—	—	Under lease by May 1886	—	—
Tukukeranga	99	Hone Makauri, Ranapia Kahukoti and others of Ngati He	R C Fraser	£105	Before May 1882	Removed September 1886
Kawaunui	30	Arama Karaka and others of Ngati He	R C Fraser	£38	Before May 1882	Removed September 1886

Source: Native Affairs Committee, 'Report on the Petition of Mrs. Douglas', AJHR, 1879, I-4; 'Removal of Restrictions on Alienation of Maori Lands', AJHR, 1884, sess II, G-5, p 2; 'Alienation of Native Lands', AJHR, 1883, G-5; Brabant, 'Lands Returned to Ngaiterangi Tribe under Tauranga District Lands Act', 4 May 1886, AJHR, 1886, G-10; doc A22, pp 82–95; doc A57, pp 135–136; doc G1, pp 59–81; doc K25, pp 217–220; doc L2, pp 25–76.